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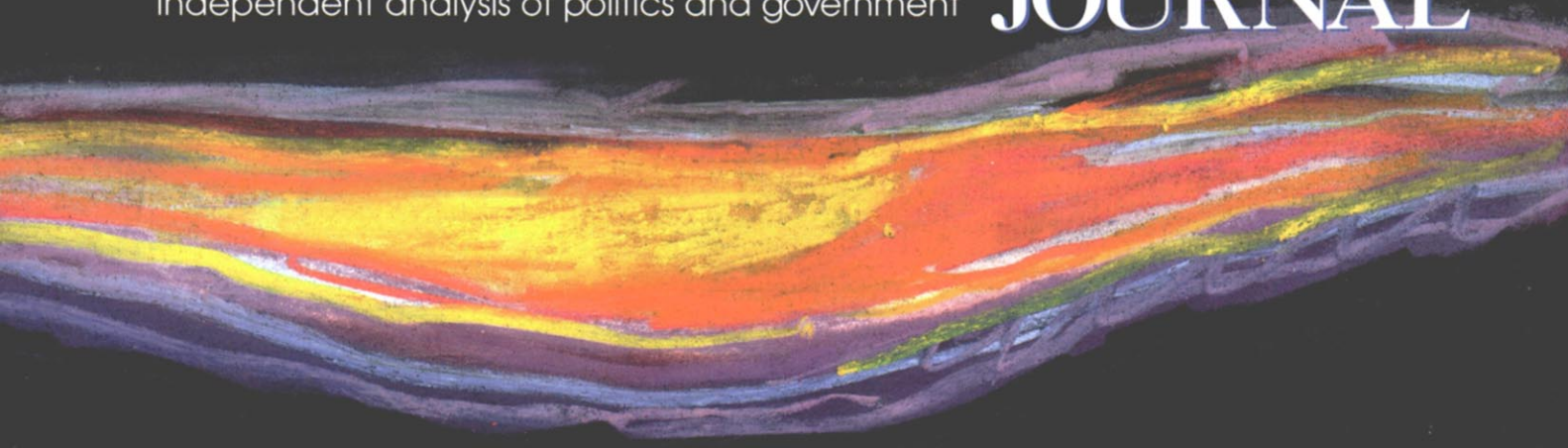

On the edge

California's failed system for coping with the mentally ill

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More than 2,000 correctional peace officers are assaulted inside California prisons every year — an average of five assaults a day.

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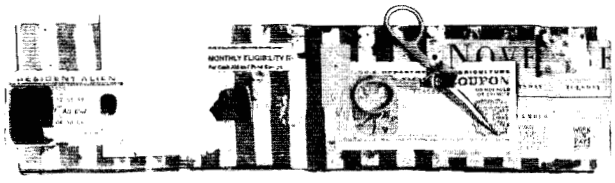

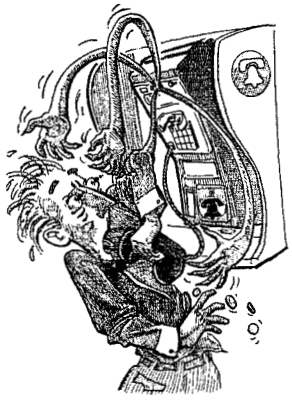

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Upfront
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A Gipper for the millenium. Ever since Ronald Reagan rode off into his term-limited sunset in 1988, Republicans have been searching for another leader who exudes strength, magnetism, moral conviction, and good humor. In other words, another conservative actor. Word has it they may have found their pick in veteran screen sex symbol Tom Selleck. *New York Times* columnist Maureen Dowd recently reported sighting of a GOP strategist in Los Angeles, apparently in town to woo the former "Magnum P.I." star to run for the U.S. Senate — possibly even to join the GOP primary for next year's contest against incumbent Senator Barbara Boxer. Dowd reports Selleck, who was visible in support of former President George Bush and failed 1996 GOP nominee Bob Dole, is being egged on by fellow screen types Bruce Willis and Arnold Schwarznegger. She also found both liberals and conservatives to give praise to Selleck as political material. Why Selleck? Dowd's sly answer is one possibility: "In an era when Americans look more to politics for entertainment than moral guidance, why not just order an actor straight up?"

Who is that guy? It seems Assemblyman Jim Morrissey (R-Santa Ana) is having a little trouble getting respect in his hometown. The conservative GOP lawmaker, who occupies the most Democratic legislative seat in Orange County, was doing a little pavement pounding during the recent legislative interim. Turns out one of his constituents was so struck by the encounter that he phoned the Santa Ana police, claiming that an "old man with gray hair and glasses" was impersonating Morrissey. Now it's possible the caller was a crackpot or a Democratic plant. Assuming it was just an honestly mistaken citizen, though, the question begs: What was it about Morrissey's performance that was so unconvincing?

On the road again. One of the best things about being a lame-duck legislator is that it gives one the freedom to take political risks — like, oh, say, go to Hawaii during the end-of-session crunch. Assemblywoman Barbara Alby (R-Folsom) took that challenge, heading for a Maui conference of women legislators one week before the end of the legislative session. A check of Alby's attendance record by *The Sacramento Bee* turned up 24 absences, the most of any legislator this year. Alby told *The Bee* the conference was an opportunity to network with legislators from other states, and noted that she'd gone on her own dime. But there were literally hundreds of bills pending while Alby was on her junket. Weren't any of them hers? If so, they must not have been all that important, otherwise she wouldn't have left them to an uncertain fate in a legislature dominated by the opposition. Of course, the real hoot about Alby's absences is that the people complaining the loudest are hardcore conservative Republicans like Assemblymembers Tom Woods (R-Shasta) and Howard Kaloogian (R-Carlsbad). Apparently what hacks them off is not that Alby was missing votes on legislation, but that she missed procedural votes — all those terribly critical motions to withdraw, points of order, appeals of the decision of the chair and so forth. The stuff that is guaranteed to chisel a legislator's name alongside the giants — Daniel Webster ... Sam Ervin ... Mr. Smith. Alby hinted to *The Bee* it might be a gender thing. Maybe. Or maybe it's just because Alby has the temerity to actually work and communicate civilly with Democrats, even ... gulp ... liberals.

Deft touch. It is comforting to know there are people in the Legislature who are able to keep things in perspective. At a recent Assembly Appropriations Committee hearing, Assemblyman Brett Granlund (R-Yucaipa) got grumpy when committee chair Carole Migden (D-San Francisco) cut him short, and grumbled about there being no time for "heterosexual questions," a jab at Migden, who is a lesbian. Migden tartly responded that all of Granlund's questions were of a "heterosexual" nature, and everyone waited for the other shoe to drop. Fortunately, the person holding the other shoe was lighter on her feet. Assemblywoman Sheila Kuehl (D-Santa Monica), who is also a lesbian, piped up with a request to ask a question of "a homosexual nature." Kuehl went on to say she'd settle for nothing less than "a straight answer."

Orange is out. When the Legislature returned to Sacramento in late August from a two-week recess, Assembly Republicans had a new leader. Assemblyman Bill Leonard (R-Rancho Cucamonga) had been elected a few months before when former leader Curt Pringle (R-Garden Grove) stepped aside. Pringle's departure came in the context of a stream of bad press about his county's GOP establishment, and there was precious little "Orange" to be found. Of six legislators tapped for leadership posts, only one — sophomore Assemblyman Dick Ackerman (R-Fullerton) — hailed from the GOP stronghold. Leonard also replaced the only Orange County legislator on the powerful Rules Committee — Assemblywoman Marilyn Brewer (R-Newport Beach). Leonard's staff choices reflect a similar change in axis — some are carryovers from his personal staff, and his chief consultant, Chris Wysocki, is a former political consultant and served as deputy chief of staff to former Assembly GOP Leader Jim Brulte (R-Rancho Cucamonga).

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CALIFORNIA JOURNAL is a monthly, non-partisan, non-ideological analysis of California government and politics established in 1970. The Journal is available on-line through StateNet, Nexis/Lexis and Westlaw. It is indexed in Public Affairs Information Service, New York Times Information Bank, Sage Urban Studies Abstracts and Urban Affairs Abstracts. *California Journal* (ISSN 0008-1205) is published monthly. Subscription rates: Libraries and Government Agencies, $59.00; Corporations and Associations, $95.00; Special Individual rate, $42.00. Address all inquiries to *California Journal*, 2101 K Street, Sacramento, CA 95816. Telephone (916) 444-2840. Copyright 1997 by Information for Public Affairs, Inc. Periodicals postage paid at Sacramento. POSTMASTER: Send address changes to CALIFORNIA JOURNAL, 2101 K Street, Sacramento, CA 95816.

None lists a pedigree with an Orange County legislator.

Master of timing. In addition to sparking international sadness, the untimely death of Diana, Princess of Wales has afforded Senator Tom Hayden (D-Santa Monica) a chance to solidify his standing as the king of the political ambulance chasers. Within 72 hours of Diana's death, Hayden was smiling on ABC's *Nightline*, shilling a freshly-hatched plan for legislation to protect celebrities from the paparazzi. The idea was so new, it hadn't even been fully unwrapped yet — Hayden spoke in generalities about "some sort of 'safe zone'" around celebrities who appear in public. Hayden, of course, has some experience with paparazzi. After all, he's a semi-celebrity himself, and was once married to a real celebrity, actress Jane Fonda. In his *Nightline* appearance, Hayden spoke approvingly of how Israeli security forces dealt with photographers pursuing him and Fonda by shooting out their tires — an interesting comment from a former peace activist. To his credit, Hayden at least owns up to his opportunism, or did to *Los Angeles Times* columnist George Skelton. But it also must be noted that Hayden's political history is littered with causes embraced and abandoned. Just look at the list: Political reform, gambling regulation, economic democracy, the breakup of Los Angeles Unified, domestic violence, the MTA fiasco. Hayden flits from issue to issue with the attention span of a gnat. So cynics should be excused if they opt to take the good senator's latest gambit with a side order of sodium chloride.

Newt's right hand? The excitement of the recent leadership struggles in Congress have died down, and the speakership of Newt Gingrich remains intact. For California, though, the failed bid to oust Gingrich has been an opportunity to improve its standing in the GOP caucus, as Representative David Dreier (R-Covina) has seen his stock climb precipitously. The 45-year-old Dreier — a Gingrich loyalist — has become the tacit leader of what *National Journal* calls "Newt's Kitchen Cabinet." Dreier, who sits on the powerful House Rules Committee, has good relations with newcomers and established members alike, and has, according to *National Journal*, been helpful in smoothing the ill feelings that developed from the leadership run. As his stock in the House continues to climb, Dreier's decision not to risk it with a U.S. Senate run against Barbara Boxer looks better and better.

Just do it. One of the oddest, and most ridiculous, vanities of higher office was on display this past session when Governor Pete Wilson signed the welfare reform bill into law (see story, page 18). As the cameras rolled in the governor's council room, Wilson sat down with the bill and a bunch of pens, and signed the law one ... letter ... at ... a ... time. After each pen stroke, he held up the writing implement and handed it to one of many invited guests behind him, most of whom were shifting in their shoes, wishing he'd just get on with it. This practice, of course, occurs with regularity in the Oval Office. It looks silly enough, but at least we're talking about the president of the United States. When it's done by a governor, it's an almost ludicrous exercise in self-importance. Where does Wilson think all those pens end up — encased in Plexiglass in climate-controlled rooms? Nope. Most of them probably wind up stuck in a big jar next to the telephone in the kitchen. Some of the Democrats who attended the bill signing no doubt were privately thinking they would like to have seen Wilson put all his pens ... well, to a different use. A respectful suggestion: Just sign it. Take photos for those desperate for a memo, and save the ego trip for when (if ever) you return to Washington. There, silliness is practically a religion.

"A little vagueness goes a long way in this business."
— Former Governor Edmund G. "Pat" Brown

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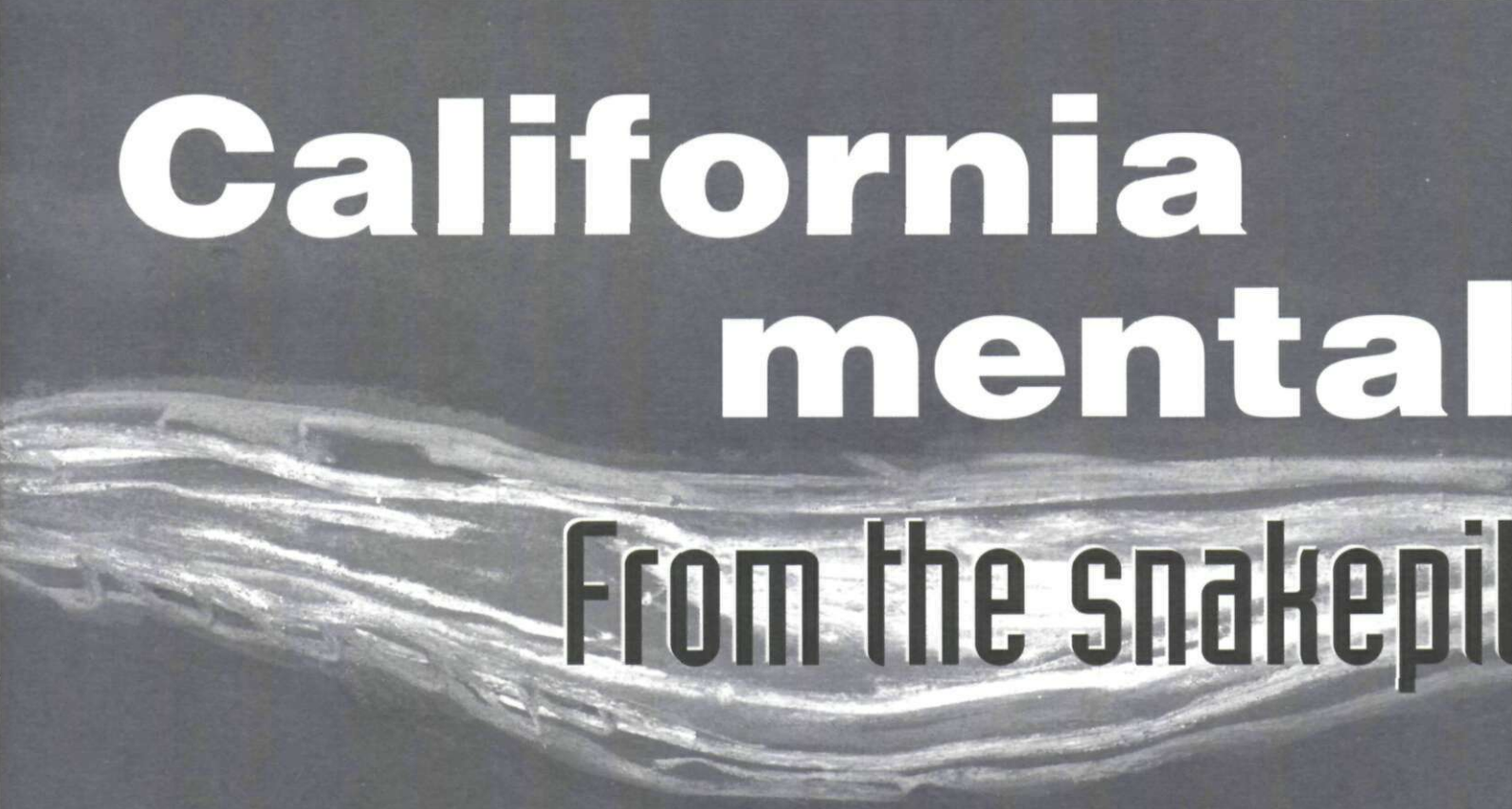
California mental

From the snakepi



California began emptying its mental hospitals nearly 30 years ago, when community-based care was touted as the more humane alternative. As thousands of homeless mentally ill wander city streets, or end up in jail or prison, policy-makers wonder: Where is this 'community care', and isn't there a better way?

By Sigrid Bathen

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health care: to the street?

We got into much of the current mess by acting on the best intentions without forseeing the worst of unintended effect.
— Joseph A. Califano, former secretary, U.S. Department of Health, Education and Welfare, Carter administration

How could we have been so blind?
— Dr. Jerome Lackner, former director, California Department of Health, Jerry Brown administration

The acute psychiatric unit of the Sacramento County Jail is located on the second floor of the towering, state-of-the-art new jail in downtown Sacramento, where some 2,000 inmates are housed. On this late summer morning, there are 11 prisoners in individual cells on the psych unit, including one severely disturbed woman who keeps trying to stuff food, or whatever else she can get her hands on, into an open incision in her chest. Every inmate in this jail-within-a-jail is severely disturbed — dumped into an already overburdened criminal justice system ill-equipped to handle them.

Nowhere are the failures of California's mental health system more glaringly apparent than in its jails and prisons. In an odd quirk of governmental happenstance, law enforcement authorities have

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been thrust into a highly unusual role as perhaps the most compelling advocates for improved community treatment for the troubled and sometimes dangerous people who are an increasingly difficult presence on the streets of California cities, in large measure as a result of the "deinstitutionalization" of state hospitals over the past three decades.

"We don't have a mental health system," says Assemblyman Don Perata (D-Alameda), a former Alameda County supervisor whose sister is a diagnosed schizophrenic. "Our homeless problem is really a mental health problem. Patrol officers serve as shepherds between the point where they pick up a homeless mentally ill person and the time they deposit him or her in the psych ward. That's what passes as a mental health system in California."

Nowhere are the failures of California's mental health system more glaringly apparent than in its jails and prisons.

California Mental Health Department Director Dr. Stephen Mayberg takes a somewhat less jaundiced, but still critical, view: "Deinstitutionalization was sort of the beginning of the difficult times. The state hospitals went from 35,000 to 5,000, and the community was expected to deal with it without the expertise or the resources. It was a recipe for problems, and we've spent a long time trying to dig ourselves out of that hole."

Legislative solutions have focused in recent years on reorganizing the maze of county, state and federal programs which govern or finance mental health — and on easing patient access to new "wonder drugs" to treat serious mental illness, as well as force the burgeoning managed care industry to pay for mental health treatment as it does for so-called "physical" ailments. Increasingly, research shows a clear biological basis for mental illness, but the HMOs have aggressively resisted expanding mental health coverage, if they provide it at all. "We have to approach [mental health treatment] in a lot of ways," says Assemblywoman Helen Thomson (D-Davis), a former psychiatric nurse. "One way is to get insurers to cover [mental illness] so patients aren't bankrupted, so there is early diagnosis and treatment. There is a much better outcome, and ultimately it's cost-effective." Thomson-Perata legislation to require HMO coverage for severe mental illness faced a threatened veto by Governor Pete Wilson, but a bipartisan measure to greatly expand Medi-Cal prescription coverage for mental illness was included in the state budget.

As state policy-makers wrestle with what are admittedly piecemeal solutions to an increasingly intractable problem, the front-line soldiers in the mental health wars are very often cops, at enormous cost to the state. A recent study by the Pacific Research Institute placed the annual cost of the mentally ill to the California criminal justice system at between $1.2 billion and $1.8 billion. Sacramento County Sheriff Glen Craig says he runs the "second-largest mental health facility in the county" — the first being the county mental health treatment center where the indigent mentally ill are taken, often by police officers. Law enforcement authorities in Los Angeles County say flatly that they run *the* largest mental health facility in the county — the Los Angeles County Jail. The U.S. Department of Justice recently ordered the county to improve its treatment for mentally ill jail inmates or risk a federal lawsuit.

"The actions of two governors — [Ronald] Reagan and [Jerry] Brown — dropped a major problem on the streets of California," says former San Jose Police Chief Joseph McNamara, a noted criminologist and author of several books on crime who is now a fellow at Stanford University's Hoover Institution. "While many of these people have accumulated long arrest records, most are more disturbed than dangerous."

Dr. Jerome Lackner, who as state health director under Governor Jerry Brown initiated an intensive investigation of patient neglect and mistreatment in the state hospitals in the 1970s, says the community care touted by deinstitutionalization advocates, like himself, never really existed. "What little there was of a community mental health system when we let everyone out has progressively diminished," says Lackner, who now specializes in alcoholism and drug abuse treatment and treats many patients who also are mentally ill. "In the last three or four years, the dimunition has been absolutely wrenching: closed clinics, closed services, laid-off caregivers. There was an inadequate system to begin with, and it's become more inadequate. ...The only long-term treatment for the mentally ill is when they finally break a law and do something really terrible."

Dr. E. Fuller Torey, a psychiatrist at the National Institute of Mental Health and author of 12 books on mental illness — including the recently published "Out of the Shadows: Confronting America's Mental Illness Crisis" — cites a 1975 California study that found nearly 7 percent of the state's jail and prison population was mentally ill. Today, some estimates go as high as one-third. "Jails and prisons have increasingly become surrogate mental hospitals for many people with severe mental illness," says Torrey.

One California prison psychiatrist summarized the mental health crisis in prisons when he told Torrey: "We are literally drowning in patients, running around trying to put our fingers in the bursting dikes, while hundreds of men continue to deteriorate psychiatrically before our eyes into serious psychoses."

As an example of the impact on local facilities, Torrey cites a 1973 study in Santa Clara County indicating that the jail population rose 300 percent in the four years after the closing of Agnews State Hospital. A 1975 study of five California jails by Arthur Bolton & Associates concluded that the number of severely mentally ill prisoners had grown 300 percent in the preceding decade. California was one of the most aggressive states in pursuing deinstitutionalization after passage of the landmark Lanterman-Petris-Short Act in 1969, and the statistics clearly show that many of the mentally ill ordered released from state hospitals to "the least restrictive alternative" were instead landing in the most restrictive — jails and prisons. Most are charged with misdemeanors like trespassing or petty theft, and Torrey says a "surprising" number are "mercy bookings" by police, particularly for homeless women often victimized by sexual predators. "At least you know they'll be safe and fed," one Los Angeles police captain told Torrey. Others, described by Torrey as

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"walking time bombs," commit serious, violent crimes.

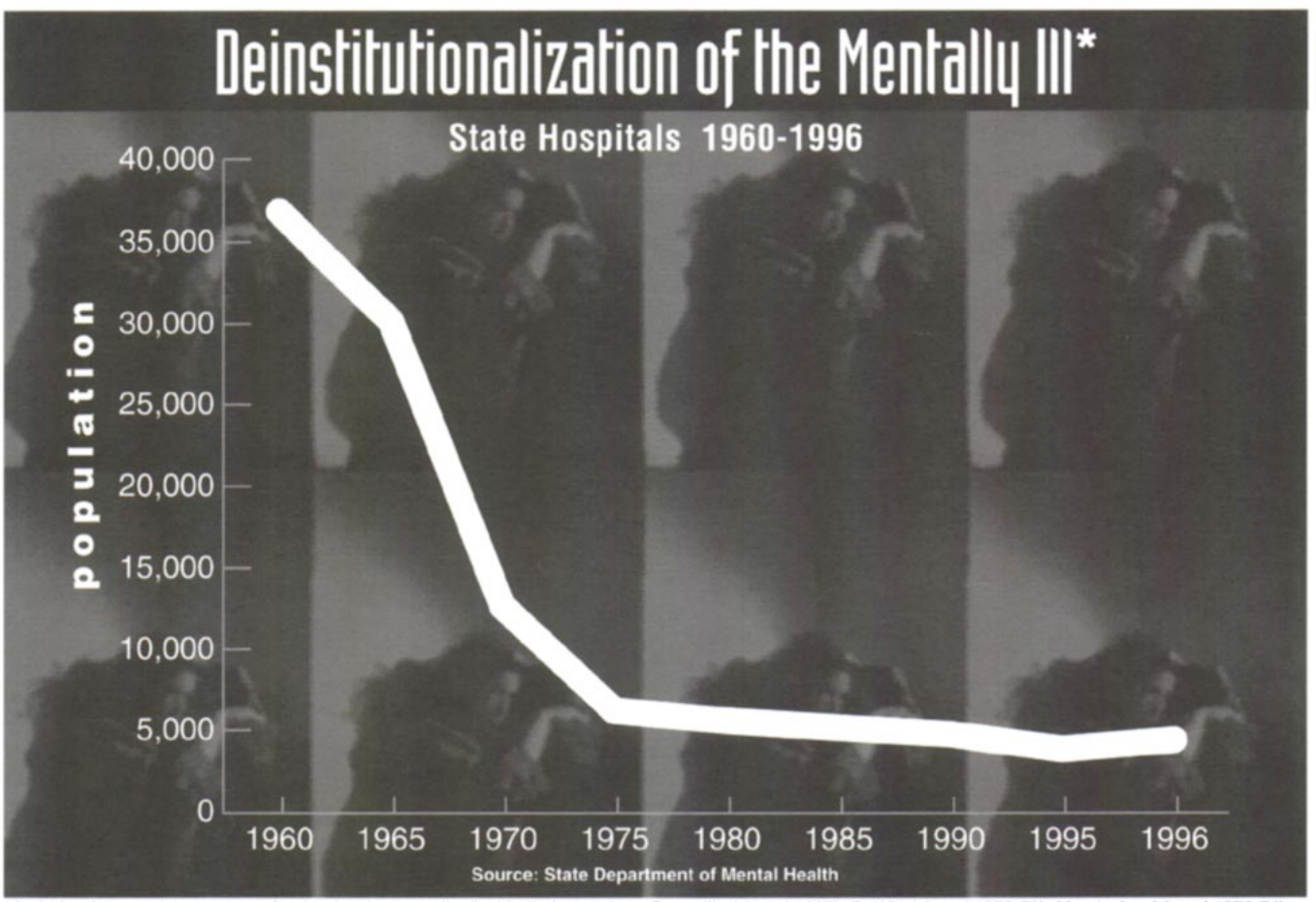
Judy Johnson remembers one of those. A registered nurse who runs the psychiatric unit in the Sacramento jail under contract with the University of California-Davis School of Medicine, she has worked for nine years in the jail, the last four as program director. Several years ago, an inmate charged with a particularly brutal attempted murder was sent to the acute unit. A man in his early 20s, he had been in and out of jail and mental hospitals for most of his life, including a three-year stay in Napa State Hospital as a teenager. He had recently been released from one of many prison and jail terms when he tried to kill a woman — in broad daylight on the streets of Sacramento — and stole her car. The woman was seriously injured, but survived.

"He was well-known to us," says Johnson. "When he was here he was very difficult to deal with in a jail setting. He was a diagnosed chronic paranoid schizophrenic with bipolar disorder [manic-depression]. He would get a couple years in prison, get 'good time,' be released. He would get medication in prison, but when he was not on his meds he was very difficult to handle. He was self-destructive, would scratch himself, cut on himself, make weapons, threaten staff, bang his head, beat on the window, fight officers. He said he heard voices and became quite paranoid." After 87 days in jail custody — 68 on the acute psych ward — he was recently sentenced to 31 years in Atascadero State Hospital.

"He was the scariest guy I've ever seen," says Johnson, who has seen her share. "We've got one right now who's the same, although he is also sexually dangerous. He sodomized someone with a baseball bat after knocking him out." The long history of the young schizophrenic fills five fat, dog-eared volumes.

On this Monday morning in the middle of August 1997 in the Sacramento jail psych unit, visitors are not told who has done what to whom, or the identities of inmates. One man, brought in violent and delusional, required seven Sacramento police officers to restrain him. He is in one of two "safety cells," submarine-like padded rooms with only a drain in the floor, visible to officers on a video monitor. The individual cells — double-celling is impossible here — have only a narrow steel bed with a plastic-covered mattress, a steel sink and toilet. One man looks like he's talking on the phone, but of course there are no phones. In one cell, there is a man in a "blue suit" — a blanket-like quilted garment, rather than the standard-issue orange jumpsuit, designed for the suicidal because it cannot be torn.

An officer in the black uniform of Sacramento sheriff's deputies stands by an open cell door, talking with an inmate who has become more "manageable." This is entirely voluntary duty, and it takes a special breed of cop to handle this place — one with an endless reserve of patience, some tolerance for the frequently bizarre behavior of the inmates, as well as the ability to handle them humanely when they become violent. The civilian UCD medical personnel, including doctors, nurses, social workers and clerks, are not permitted to be with an inmate unless an officer is present, and sometimes the officers have to perform "cell extractions" to get an inmate out of his cell for the required legal hearings



* Includes Agnews (now a center for the developmentally disabled), Atascadero, Camarillo (closed 1997), DeWitt (closed 1972-73), Mendocino (closed 1973-74), Metropolitan, Modesto (closed 1970-71), Napa, Patton, Stockton (closed 1996). Does not include developmentally disabled (mentally retarded) residents in these and other state hospitals, whose numbers have experienced a similiar decline.

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Dr. Jerome Lackner

on forced medication, or to take him to court, or to release him. Jail staff attempt to ensure some follow-up treatment, but know their efforts are often futile. "It is more likely that they will not get follow-up than that they will," says Craig. Officers and UCD medical staff have little time for the psychiatric therapy these inmates desperately need. Many inmates soon return, some again and again.

In a curious melding of correctional and medical terminology, some 130 to 150 inmates also are treated on an "outpatient" basis, which means they are in the general population of the jail but have been identified as mentally disturbed and receiving medication. Some are housed together in a "pod" within the jail, others throughout the jail. The waiting list for treatment is long — 92 waiting for appointments on this day, 20 of those identified as "priority."

"We are just swamped," says Johnson. "We have waiting lists within waiting lists and obviously cannot meet the needs of the population." A random sampling of all jail bookings in April 1995 by Dr. Daniel Edwards, a UCD clinical psychologist who is associate clinical director for jail psychiatric services, revealed that 19 percent of the inmates booked that month had previous contact with the county mental health system. That number did not include those who may have received treatment outside the county. "We believe the actual figure is much higher," says Johnson.

Across town at the county mental health treatment center, where mentally disturbed people are brought by police, caregivers or sometimes come in on their own, patients walk around more freely, although the facility itself is secure and locked. The difference between this group and those in jail is not always clear, except that they haven't been charged with crimes. Center Director Kathleen Henry and Sacramento County Mental Health Director Tom Sullivan, both licensed clinical social workers with long experience, say staff assaults are common. One memorable female patient left 14 staff members needing medical attention for bites, scratches and bruises.

People will stay anywhere from 23 hours to days or even months. The involuntary 72-hour holds under Section 5150 of the state Welfare and Institutions Code are common, as well as 14-day and 30-day holds, for which hearings must be held before an administrative law judge. The average stay is about a week. In one unusual case, a mentally ill AIDS patient died in the facility after 18 months; there was nowhere else for him to go. Some 700 people are seen every month at the center, which has a capacity of about 80, although less than one-third are admitted as inpatients. Many patients are repeat visitors, although outpatient community followup is somewhat more successful than with jail inmates; while clearly unable to keep pace with demand, counties operate a variety of community services for outpatient treatment.

On this pleasant, sunny day in mid-August, patients are milling about, some staring vacantly in day rooms, some asleep in their rooms, others outside in the enclosed courtyard. One is feeding a rabbit in a cage. A 15-year-old boy brought in after an overdose of pills — he had just been released from a mental facility when he took the pills — is in a separate room. He tells staff he will do it again until he is removed from his home. Children are generally not kept more than 23 hours in the center, instead going to group homes or other facilities. Mental health treatment for kids is an escalating problem in California, and facilities to treat them are woefully inadequate. "With the increase in child abuse," says Sullivan, "it's only going to get worse."

At one point, a wild-eyed woman approaches visitors, speaking incoherently. She says she has a husband and five children, but their whereabouts are unclear. She had been found by police, screaming and partially clothed, on a downtown street, apparently on drugs, but she refused a toxicology screening. Although a clinical diagnosis is difficult at this early juncture, she is believed to be suffering from paranoid schizophrenia. She was released after two weeks to a relative in another state.

As the state hospitals have emptied, community care has devolved to the increasingly financially strapped counties, where for many years mental health funding has been on a fiscal roller coaster, subject to the vagaries of the state budget. In 1991, "realignment" legislation created a more stable funding source by earmarking a certain percentage of the sales tax and the vehicle license fees for mental health funding. But that was in the middle of the recession, so the funding was hardly rich. The California Psychiatric Association estimates that one-fourth of Americans suffer from some type of brain disorder, 2.8 percent of them severe. Yet California currently ranks 48th among the 50 states in per-capita expenditures for mental health.

"Through the '80s, there was growth in [community] programs," says Mayberg, a clinical psychologist and former Yolo County mental health director. "The economy was good, and people were willing to put some money into mental health. When the economy turned bad, it was the largest [non-mandated] program, and it was the easiest to cut. The mental health community was fractious, competing, arguing — sort of like starving people at a handout, fighting over scraps. There was no coherence in mental health planning, and nobody was looking at whether we could turn the scraps into a meal."

In late August 1997, state hospitals for the mentally ill housed 4,386 people, — down from more than 36,000 in 1961 — and most of those are criminal or civil commitments.

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In addition, there are approximately 4,000 developmentally disabled in state hospitals, now called "developmental centers," down from a high of about 35,000. Tracking the number of mentally ill in community programs is more difficult. "Clearly, we need to build more capacity at the community level," he says. "The new research seems to indicate that, for those with the most serious impairment, the broader array of interventions we can offer, the better they get — better housing, more jobs and job training, more support groups, more socialization. When you get a job, you *have* to get up and take your medication, take care of your hygiene."

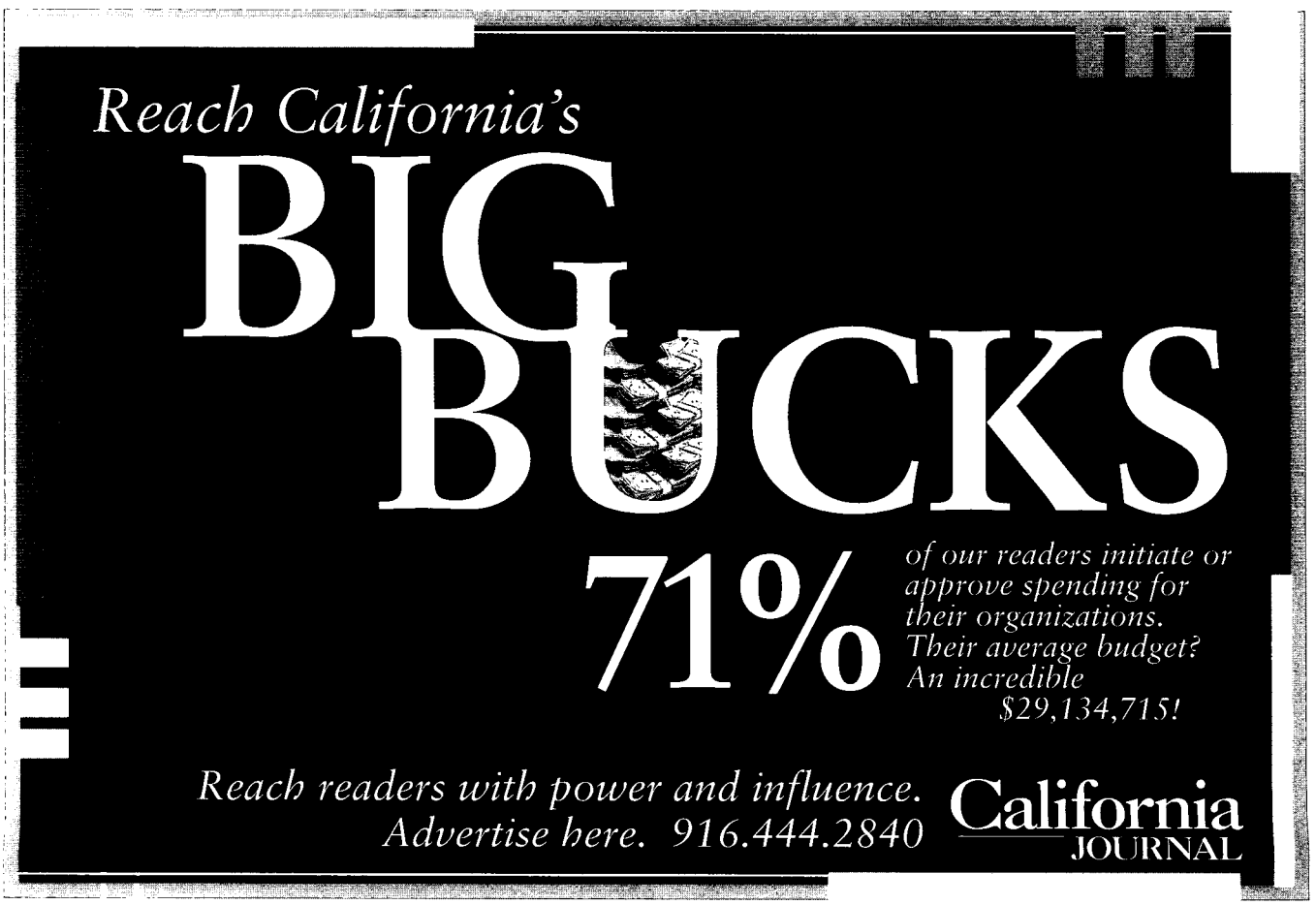
Steve Thompson, the California Medical Association's principal lobbyist and a former top legislative staffer who helped write the Lanterman-Petris-Short Act in the late 1960s, cautions against a return to state hospitals as a solution to the current mental health crisis in California. "We tend to see the warts and not the successes of deinstitutionalization," he says. "People see the walking wounded on the malls because they're visible, but they didn't see them in the state hospitals, as I did. There never were sufficient resources put out there [in the community]. Freedom carries pain, but that doesn't mean that those who can't function normally should be put out of sight, out of mind. That may be efficient, but it's not humane."

Dramatic strides in effective medications for serious mental illness have led to a spate of legislation around the country to ensure that people who need medication actually get it. "The last 10 years have brought about miraculous drugs," says Rusty Selix, executive director of the California Mental Health Association. "Ninety-five percent of what we've learned, we've learned in the last 10 years. The older drugs didn't always work, they weren't safe, and they were combined with a lot of inhumane treatment. A lot of people on the streets have had bad experiences in that system. Treatment didn't work, there were drugs with debilitating side effects. ...There is a whole generation of mentally ill who have experienced the horrors and are reluctant to trust."

The Legislature this year has taken several steps to address the problems. The state budget included a $19 million appropriation to enable Medi-Cal patients to obtain the new miracle drugs. If fully implemented, the action could negate the need for legislation proposed earlier this year to add the drugs to the list of those permitted under Medi-Cal. A key reform, already adopted in many other states, it could save the state as much as $1.25 billion in health care, social services and correctional costs associated with mental illness — if the drugs get to the patients and they take them as prescribed.

Another bill, AB 1100 by Thomson and Perata, is faring less well. It would require private health care insurers — HMOs — to provide treatment for severe mental illness in the same way they do for physical illness. Similar measures have been passed in other states, but Wilson has said he will veto any bill impacting HMOs until a state task force studying the controversial health care organizations completes its work in January. Perata believes future strategy should focus on convincing business leaders the idea is cost effective.

"Everybody has some experience with this," he said. "If it doesn't happen with this governor, it is within reach."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The faces o
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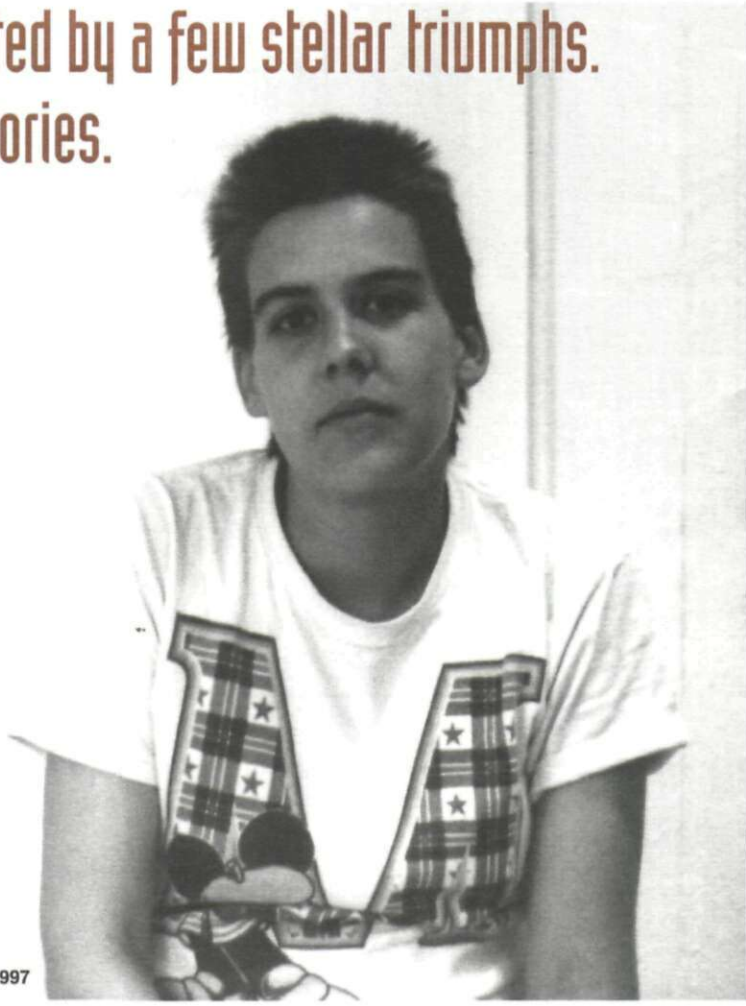
'A nightmare in broad

In the chronicles of California's treatment of the mentally ill, there are many stories, too many of them horrific and sad, punctuated by a few stellar triumphs. Here are three of those stories.

By Sigrid Bathen



Melanie, 1997

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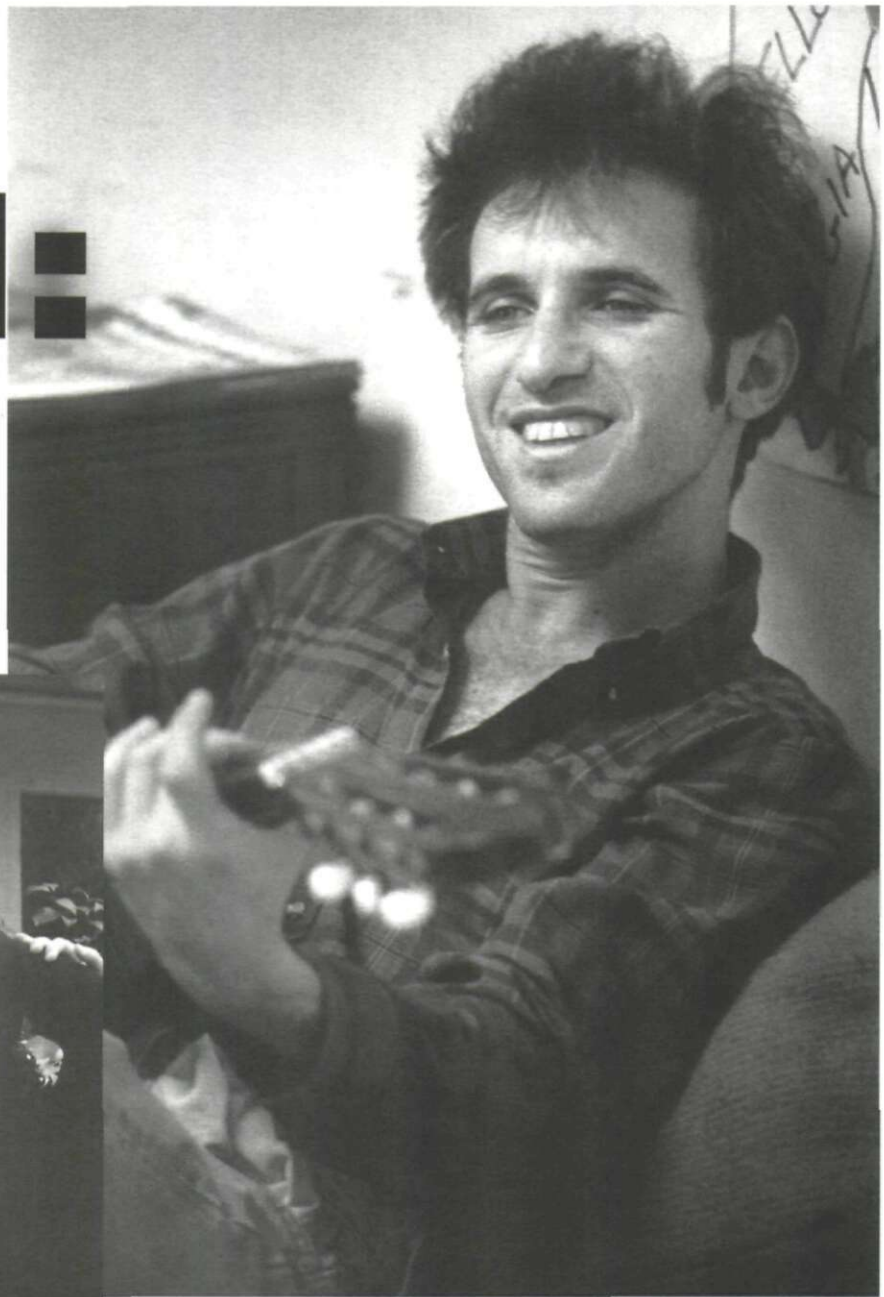

David Weisburd, 1989 (Photo courtesy of Los Angeles Times)

Marc Kiefer (left) with father Frank, 1991

Melanie

It has been nine years since then-14-year-old Melanie started showing signs of mental illness. "It was difficult to tell, really, what was going on with her," recalls her mother, Susan Miller, a registered nurse who has battled the mental health system, and sometimes her daughter, to get Melanie the help she needed. It was a battle that continued even when, like many mentally ill people, Melanie refused to accept help, refused to take the medication that calmed her wild mood swings, disappeared on the streets for months on end.

During one of the terrifying manic periods that are characteristic of Melanie's severe bipolar disorder (manic-depression), she assaulted her mother in Miller's San Francisco apartment, beating her severely. "She was 19 or 20 then, living in Sacramento by herself," says Miller. "I'd sent her money to take a bus to come and see me in San Francisco. She was talking to herself and had been progressively getting sicker.

"We were cooking dinner, and she asked me if I wanted to put any seasoning in the stir-fry. I suggested she put the seasoning on the table. She pulled out a bottle of curry and dumped about half the bottle in the stir-fry. Then she went

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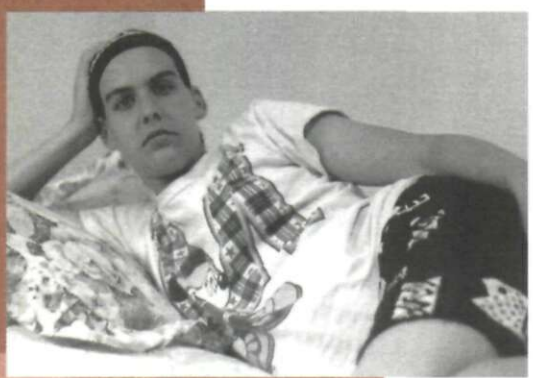

upstairs and packed her backpack. I knew she was on the edge. As she started to walk out the front door, she started kicking me in the stomach, punching me over and over again. Finally, I was able to shove her out the door. I looked out the kitchen window, and I could see her talking to herself in the parking lot. The next day she called me and said, 'Mom, I can't believe I did that.'"

Melanie's history is not uncommon: Repeated, generally involuntary, hospitalizations in a dizzying assortment of mental health facilities in Sacramento and San Francisco but never, in the view of her longtime physician and her mother, long enough to stabilize her condition and establish her on medication. "The last time she was discharged, she was homeless on the streets of Sacramento," says Miller. "I started calling homeless shelters and asking if there was anybody there named Melanie, and they'd say they couldn't tell me. I remember it was raining, and here I was at the Red Lion Hotel, and my daughter was on the streets in the rain."

Melanie's behavior, and the episodes of her life, paint a disturbing picture: picked up by Sacramento police as she tried to open a can by endlessly rapping it on the sidewalk on the K Street Mall near the seedy downtown Sacramento hotel where she lived; dismantling a sink in her apartment because she felt it looked better in a closet; using a felt pen to write scripture from the Bible over every inch of her room; hearing voices; insisting she was engaged first to actor Johnny Depp, then to singer Eddie Veder; ranting and raving incoherently; disappearing for months on end; two days in the Sacramento County Jail for auto theft. The theft charge was dismissed after her mother wrote the court about the severity of her daughter's illness. "I wonder what happens to people who don't have families to advocate for them," says Miller.

left: Melanie, circa 1992
middle: Melanie, September 1997
bottom: Melanie, age 3, with her sister Leann, age 8 (left)

When Melanie was a teenager, living in Sacramento with her family, she took the path of many mentally ill — using street drugs to make her "feel better." She withdrew from the family — her parents are divorced, and she has an older sister, who graduated with honors from the University of California, Berkeley — and developed a circle of friends her mother "was not comfortable with." It would be more than three years before Melanie's illness was fully diagnosed, and during that time she became heavily involved with methamphetamine.

She dropped out of high school at 16. After one of the longer disappearances, she turned up in the Sacramento Mental Health Treatment Center. "I couldn't believe how skinny she was, how awful she looked," her mother recalls. Doctors decided her major problem at that time was drug use — a common, though incomplete, diagnosis that would have disastrous implications for her future mental health treatment. "I brought her home with me," says

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Miller. "Toxicology tests showed she was clean of [street] drugs, but the symptoms persisted, and got worse. She set up a shrine in her bedroom, became violent, withdrew from everyone, would not go out of the house."

In 1993, Miller took then-19-year-old Melanie to see Dr. Jerome Lackner (see previous story), who diagnosed her as severely bipolar (manic-depressive), delusional and psychotic. By the time Lackner saw her, Melanie's behavior had become increasingly bizarre. Concerned that her numerous hospitalizations had yielded no complete diagnosis, consistent treatment plan or follow-up, Lackner recommended she be immediately hospitalized at the Langley Porter Psychiatric Institute of the University of California Medical School in San Francisco, where she was placed on medication to calm her wild mood swings.

Lackner said she was improved upon release, and he ordered the requisite lab tests to determine her reaction to the medication. She didn't return to see him for five months, when she advised him she had her own apartment in Sacramento was having regular contact with her father and stepmother, both registered nurses in Sacramento, as well as with her mother. Her behavior continued to be bizarre, and Lackner questioned whether her lithium dosage was sufficient but bemoaned her lack of cooperation in getting the necessary lab tests.

By December of 1993, Melanie was refusing to take any medication and was "clearly hostile" in a visit with Lackner. She missed her next two appointments, surfacing again in the spring of 1994, Lackner said, "in a rather florid state of mania." She then missed three more appointments, dropping in unannounced in the fall of 1994. Around the same time, her behavior caused her to be evicted from her apartment. Lackner last saw her in January 1997. She had been cut off by the Social Security Administration and Medi-Cal because she didn't show up for the medical and psychiatric evaluations.

Her mother has since been able to get her Medi-Cal reinstated, but the SSI that provides her only support has been more difficult to reinstate; Lackner says because of a seriously backlogged and flawed system which denies benefits to seriously mentally ill patients who also have a history of drug abuse. "Instead of punishing the system that cannot cope with our sickest patients, we will just punish the patient and let her go without benefits," Lackner wrote in a heated May 1997 letter protesting the continued denial of her SSI benefits.

In August 1997, Susan Miller moved back to Sacramento, commuting from her San Francisco nursing job until she finds work in Sacramento. Meanwhile, her 23-year-old daughter is living in a decrepit, roach-infested downtown Sacramento hotel. And she is pregnant by a mentally ill young man whom she met in the hotel, and who disappeared after he learned of the pregnancy.

Oddly enough, Lackner says, pregnancy sometimes has a calming effect on severely disturbed women, and that seems to be the case with Melanie, who has scrounged second-hand baby clothes and recently accompanied her mother to look for a house. "She's obviously still having problems, but she is more conversant," says her mother. "She looks very strange, and behaves strangely, and of course nobody would rent to me when they saw her. So I told them she had a brain tumor. They seemed to accept that."

Melanie's baby — a girl — is due this month.

Marc

Marc Kiefer suffered from schizophrenia, that most devastating of mental illnesses that strikes an estimated 1 percent of the population. Often, its victims are unusually creative and intelligent. In high school, Marc excelled in sports, and was a freshman at the University of California, Berkeley, when his first schizophrenic break occurred. But he graduated in 1980, and in 1992 earned a teaching credential at California State University, Hayward.

On February 3, 1993, at age 38, having lived with his illness for two decades, he died after 18 hours in "seclusion and restraints" at a Richmond psychiatric hospital with a history of complaints about poor patient care. Investigators concluded he died as a result of an overdose of psychiatric medication — which had been suspected by his family from the start of his hospitalization — as well as the "inappropriate" use of seclusion and restraints. He had severe bruises and welts at the sites of the leather straps and "restraint cuffs." Rigor mortis had already set in, an indication that he had not been checked for hours, although hospital records indicate he was checked every 15 minutes.

In a wrenching article about his son's death in the *THE JOURNAL*, a publication of the California Alliance for the Mentally Ill, Frank Kiefer, a retired journalist and legislative and congressional staffer, wrote about the progression of his son's illness — how the smart and talented young man bounced from job to job, janitor to substitute teacher and finally to sportswriter for a small newspaper. "He had no trouble getting jobs, but invariably lost them when stress and fear and anger and anxiety and hallucinatory voices overwhelmed him, and his troubles became apparent to his colleagues," his father wrote. At the last newspaper where he worked, he had leveled with the sports editor about his illness — unlike his previous jobs — and the editor proved to be an understanding man. Marc was attending a day treatment program in Oakland, living on his own, and seemed to be stabilized on medication when, on February 1, 1993, he began to behave strangely. He seemed disoriented and acted confused and giddy. His parents suspected he had taken too much of a prescription medication — a common problem for schizophrenics, for whom truly effective medications were only recently developed. They took him to his day treatment program, where his disorientation became more pronounced, and staff there recommended he be taken to a psychiatric facility for an emergency evaluation.

Unlike many schizophrenics, Marc Kiefer had never been hospitalized in a locked inpatient psychiatric facility. He had been seeing the same psychiatrist for 20 years, was well-groomed, cooperative and very close to his family. The psychiatric evaluator for East Bay Hospital, an 87-bed, for-profit psychiatric facility in Richmond which served primarily Medi-Cal patients, recommended a voluntary commitment, to which Marc quickly agreed.

Two days later, he was dead, having died alone in a "seclusion" room, strapped to a table for 18 hours. His parents, who had already lost one mentally ill son to suicide in 1992, were devastated. "The end came during the graveyard shift, midnight to 7:30 a.m.," his father wrote. "The attendant on duty failed to check Marc's circulation for over seven hours, although he indicated that he had done so every 15 minutes. Marc had been dead for several hours while the

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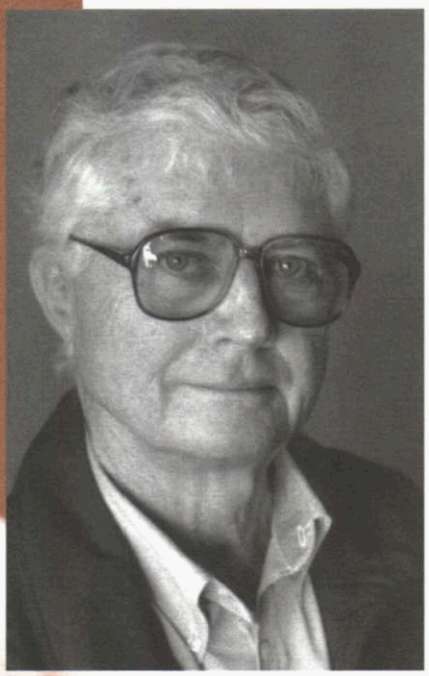

above left: Marc Kiefer with nephew, circa 1982
upper right: Frank Kiefer
right: Marc, 1991.

attendant allegedly 'checked' his circulation and observed him 'sleeping.'" The parents and Marc's longtime psychiatrist had repeatedly called the facility, but were "invariably shunted about, given misinformation, promised return calls that never materialized, lectured on confidentiality, even hung up on." The doctor on duty did call them on the morning of February 3 — to tell them their son was dead.

A subsequent investigation and report, issued in February 1994 by a federally funded, non-profit organization for the disabled called Protection and Advocacy Inc. (PAI), concluded that Marc Kiefer died as a result of grossly inferior care that violated all variety of medical standards — from East Bay's failure to conduct an adequate physical exam to inadequate monitoring of the patient, to failure to "identify and respond to a life-threatening medical condition." Ultimately, PAI concluded, the facility "chose exactly the wrong course of treatment," failing to conduct thorough blood screening and even prescribing the wrong medications.

"Seclusion and restraint can cause serious physical and emotional harm," the PAI investigation into Marc Kiefer's death concluded, "especially when used for long periods of time, for inappropriate reasons or without adequate monitoring and care, as was the situation with Kiefer. Risks include dehydration, exhaustion, cardiac arrest or respiratory collapse, fractures, muscle and kidney damage, self-mutilation as a result of being alone and isolated. The emotional impact of seclusion can be severe."

The Kiefer case and other complaints about East Bay ultimately resulted in the facility's closure earlier this year after local authorities stopped referring patients there. The family sued the hospital and received a $125,000 settlement.

David

When David Weisburd was a senior at North Hollywood High School in 1978, he earned a near-perfect score on the Scholastic Aptitude Test — 1575 out of 1600. A prodigy in math and science, he had been taking college classes since he was in junior high. He was a long-distance runner and tennis player in high school, leading the Andover summer session tennis team to victory over Exeter. His summer philosophy teacher, who taught at Harvard, wrote his father that David was the best student he had ever had.

Recruited by Harvard, he was a sophomore there in 1980 when his father got the phone call that changed their lives forever. "I remember hearing a hospital PA system in the background," recalls Dan Weisburd, an award-winning film producer, director and screenwriter who has devoted the years since the onset of David's illness to producing documentaries and writing about the mentally ill. "David said, 'Don't worry, Dad, I can handle it. I've checked myself into the hospital. You won't believe this, but last night the entire football team, in the nude, chased me across Harvard Square and threw a grand piano at me. Now all the radio stations in the world are beaming their signals into my brain, saying the world wants me dead.'"

Then his doctor got on the phone, urging Dan Weisburd to come and get his son as soon as possible and have him admitted to a psychiatric facility closer to home. "Two things were implied in what the doctor said," the elder Weisburd wrote in an article in the *THE JOURNAL*, which he edits and founded in 1989. "We were in for a long siege, and there was little or nothing that Harvard knew to do for this now less-than-perfect being whom they had so fervently courted only two years previously."

Financially secure, Dan Weisburd and his wife, Elaine, who have two other children, started draining savings accounts, determined to find treatment for David's schizophrenia. "David was refractory [resistant] to all antipsychotic

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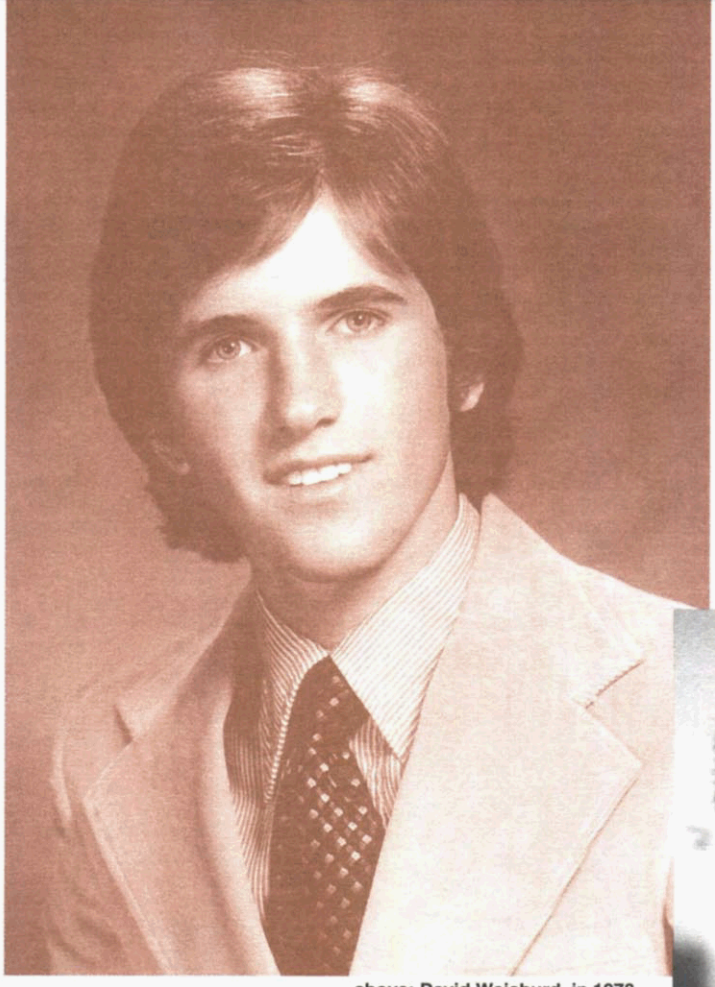

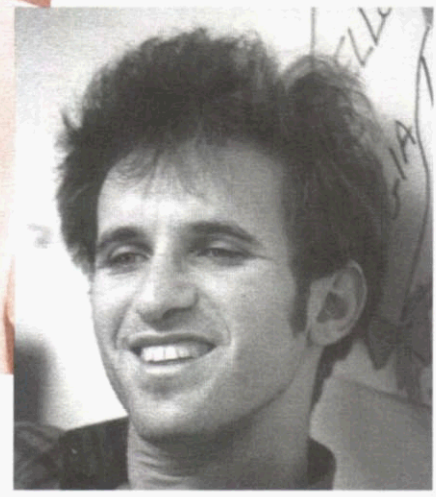

above: David Weisburd, in 1978
right: David, 1989

medications," his father wrote. "He was zombied ... and, at times, incontinent. He was disruptive in day-treatment programs, a fire hazard in various residential settings, argumentative, even violent, and regularly kicked out of place after place, supposedly to preserve the 'milieu' for others whose behavior was more 'appropriate.' The easy ones got the service; the sickest got the streets.

"On the outside, David was jailed, robbed, lost in the Sierra foothills and in the Tenderloin of San Francisco, victim of an attempted rape. In and out of private, county, state and university hospitals. ...He was a failure as a patient, obdurate. Doctor after doctor said 'sorry' as David [declined] 'til soon, he had been seen by dozens of psychiatrists, not to mention legions of internists and residents. But always the care that followed seemed to lead nowhere. It was a nightmare in broad daylight."

Living at home with the family, which included two younger siblings, David was loud, disruptive, sometimes dangerous, once attacking his younger brother, who was devastated by this horrific change in the beloved sibling he had called his "hero."

Late one night, the family was forced to call the police when David brandished a butcher knife, believing someone was trying to kill him. Eight police officers in several squad cars descended on the Weisburd home, but what could have become a tragic confrontation was defused by officers who put down their guns and talked him out of the knife. His grateful father subsequently produced training films for law enforcement officers on how to deal humanely with the mentally ill. Underwritten by the state Department of Mental Health, the training films are widely used by law enforcement agencies around the country.

When it became clear he could not live at home, David was placed in various care facilities, and has lived for nearly two years in a small group home connected with The Village Integrated Service Agency in Long Beach, a rehabilitation treatment program — one of two pilot programs legislatively created out of a state task force chaired by his father. Today, at age 36, he is doing well, taking two of the recently developed medications to control the delusions and hallucinations of schizophrenia, playing the guitar and keyboard, working a few hours a day preparing school lunches. He has appeared with his family on National Public Radio's "All Things Considered" for a segment on "Living with Schizophrenia," and has been featured in several television documentaries, including the prize-winning 1988 ABC-TV documentary, "They Have Souls, Too." He was a consultant on a 1996 episode of "ER," based on his life as a homeless man with schizophrenia, and he has written two articles for the *THE JOURNAL*, including one in December 1996, in which he recounted his terror at attending a large awards presentation at the Sheraton Universal Hotel by the Sisters of Providence, who operate St. Joseph's Hospital in Burbank.

His father was receiving an award that night for his work in behalf of the mentally ill, and David was very nervous about appearing in such a large public setting. "I knew it meant dressing up," he wrote. "I hadn't done that for years. Schizophrenia kind of changes your social life, big time." He even consulted his "voices" about the wisdom of going. "My voices gave me all kinds of reasons, pro and con. They do little to clarify things for me and a lot to further my confusion. They also know me better than most people do." He decided to go — "my 'yes' came from a small reservoir of pride I've held on to, a still clear memory of the self I once was."

During his acceptance remarks, Dan Weisburd motioned to David and praised his courage in his battle with schizophrenia — and asked David to stand. "I did," wrote David, "and 750 people came to their feet. I couldn't believe it. ...I think about that when I'm on the job... It's my first real job in 16 years, and I've begun to enjoy it and the companionship of my co-workers. There are no ovations for me there, or in the music class that I've enrolled in, but I'm overcoming a lot of obstacles, like getting places on time, and keeping my thoughts focused, and I know I'm learning some new licks on the keyboard. . .

"After 16 years as a labeled mental patient, I really begin to sense a slight but honest degree of hope. The meds are getting better. . .I'm calm and even optimistic."

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Can welfare

California enters a brave new world of welfare reform with a well-funded plan and a well- stocked prayer book

Illustration by Meg McAneny

by John Borland

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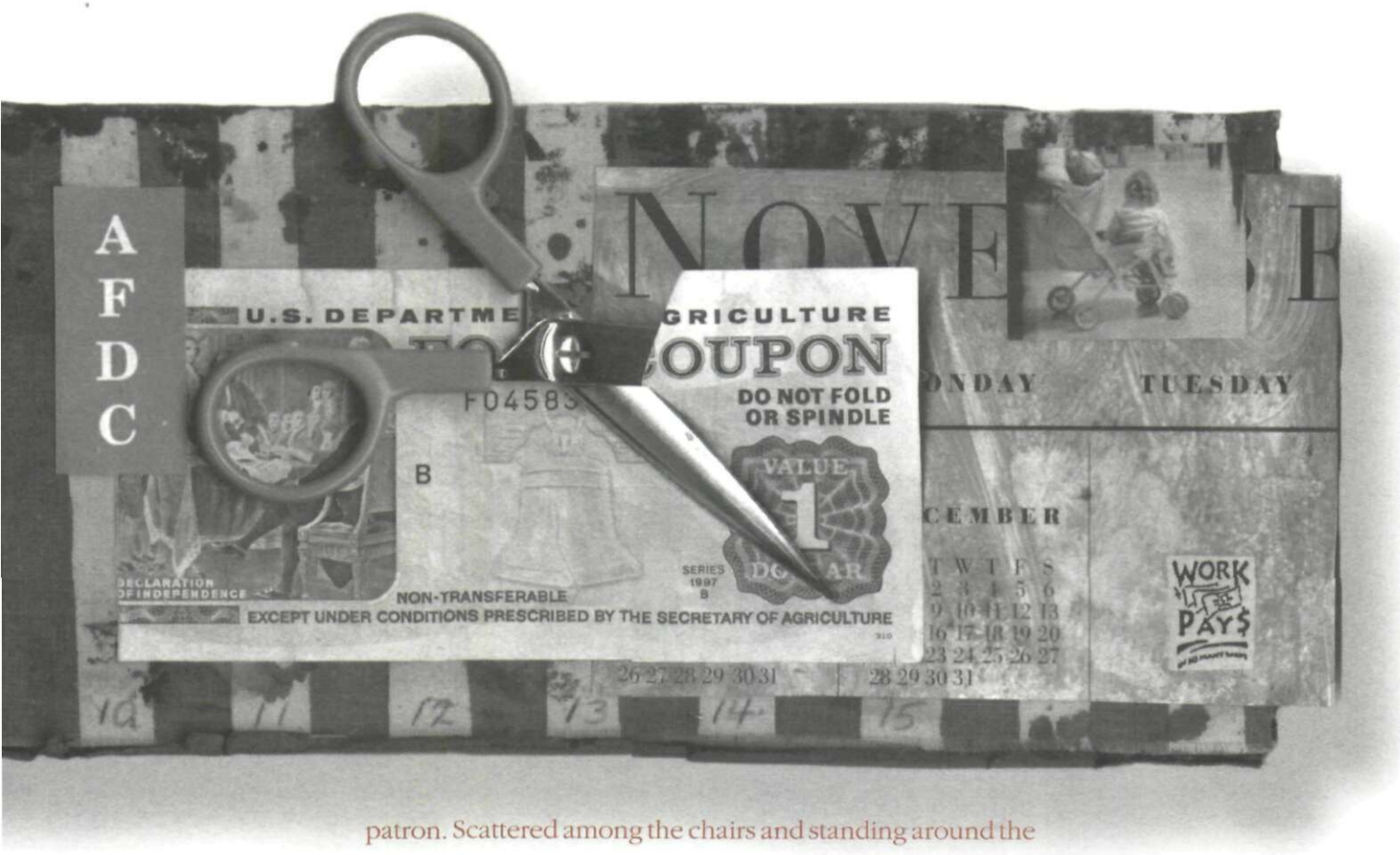
work?

The county welfare office in Sacramento's midtown feels like nothing so much as a bus station. The decor is strictly hard-tile institutional — lines of plastic blue chairs fill the room, frosted glass windows line three sides of a large waiting area, twin televisions pump cartoons into the weekday afternoon. A blue-uniformed guard at the back of the waiting room, near the door to the street, chats with a



patron. Scattered among the chairs and standing around the edges of the room, waiting for a turn at one of the windows, are current welfare recipients and new applicants. The room is tense with impatience and frustration; this is nobody's favorite place to spend a hot afternoon.

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Unlike the bus station, welfare only rarely has provided a ticket elsewhere.

Over the course of the next year, state and county officials hope to change this sense of immobility. With the passage of California's landmark welfare system overhaul, almost all recipients will be required to work, be offered a substantially increased array of services such as child care, substance abuse and mental health treatment, job training and job search assistance, but ultimately will be cut from aid if they stay too long. The hope of reformers is that this carrot-and-stick combination will allow most recipients to find a job before their time runs out. What is certain is that the shape of recipients' futures has changed dramatically.

Welfare reform offers us the opportunity and the challenge to recast our very culture so that taxpayers no longer subsidize idleness or promiscuity.

— Governor Pete Wilson

The drive for welfare reform is far from new. Calls to overhaul the decades-old Federal Aid to Families with Dependent Children (AFDC) program have been a staple of political discourse. In 1988 Congress approved a program requiring states to push more of their AFDC population toward work. In California this took the shape of the Greater Avenues to Independence (GAIN) program, which in recent years has helped more than 100,000 recipients find jobs each year.

But it took the election of President Bill Clinton and the subsequent 1994 election of the conservative GOP Congress to blow up the old AFDC model. After a series of partisan fits and starts, Congress passed and Clinton signed on August 22, 1996, a bill that gave states responsibility for structuring their own welfare programs, giving them block grants to finance the programs. The new law, which also instituted a strict five-year lifetime limit on aid for recipients and progressively stricter work requirements, was dubbed Temporary Aid for Needy Families, or TANF.

Enter California. While many states had reforms already in place or ready to roll out, developed out of pilot projects and expanded in preparation for Congress' action, California had not yet had the political discussions necessary to revamp its system. Governor Pete Wilson and Democratic legislators had been wrangling over benefit reductions and minor AFDC modifications for several years. While a calamitous budget climate occasioned some rollback in benefit levels, most of the tinkering had been killed by the Legislature and some of the benefit reductions stalled in a pokey federal waiver process.

Wilson seized the initiative on welfare reform early in 1997, releasing a comprehensive proposal along with the January draft of his budget. He made the issue a major focus of his 1997 State of the State speech, setting the tone for much of the year's often contentious debates by blasting welfare recipients.

"Welfare reform offers us the opportunity and the challenge to recast our very culture," Wilson intoned, "so that taxpayers no longer subsidize idleness or promiscuity ... and no longer suffer when illegitimacy hatches into social pathology."

Not words calculated to build bridges with Democrats, who were riding high after regaining an unalloyed legislative majority in 1996. But Wilson's foes had their own problems: They had no countervailing plan of their own ready and faced deep internal divisions as to how to reshape the old system. Liberals were concerned that the weave of the state's safety net be kept as tight as possible for those unable to find work in the era of time-limited assistance. Moderates, particularly those in swing districts who had squeaked into office in the 1996 elections, were concerned that they not be portrayed as protectors of a discredited system, and so wanted to put the emphasis on pushing recipients into work faster, with fewer loopholes.

What resulted was a legislative curiosity — an 18-member two-house conference committee, dominated by Democrats, hashing out an issue that neither house had yet debated in any substantive form. And like other mythical behemoths, it moved ponderously. Initially broken into small issue-area working groups, it eventually reconvened for full-group meetings only sporadically attended by most of the six Republican members. By mid-summer, members were ready to approve a draft proposal based on the small groups' recommendations and an outline released earlier by Democratic leaders. But moderates in the Democratic caucuses dug in their heels, and a few weeks later the committee reconvened to rubber-stamp a set of compromise proposals that had moved considerably to the right.

It wasn't enough. The package of bills won only a single Republican vote on either legislative house floor. Making matters worse, a procedural oversight in the Assembly allowed Wilson to veto one of the plan's major pieces even before the lower house had completed its debate, stealing headlines and robbing Democrats of a key public relations boost.

Thus was born the last phase of the debate, and a new legislative curiosity to go along with it. Already inextricably tangled in the year's budget process, the issue was pushed into the "Big Five" group of budget negotiations by Wilson's veto. A smaller group of legislators was initially called to hash out only the mid-range issues, but when Wilson and legislative leaders proved unable to reach any substantive compromise, this "Little Four" — Assembly members Dion Aroner (D-Berkeley) and Roy Ashburn (R-Bakersfield) and state Senators Mike Thompson (D-St. Helena) and Ken Maddy (R-Fresno) — was given the whole portfolio. In a long weekend of closed-door negotiations they came to an agreement that effectively split the difference between Wilson's and the Democrats' plans.

Liberals and a few conservatives balked at the compromise. Even Aroner, who had helped negotiate the final proposal, voted against it on the floor. But the plan had more than enough votes from both parties, and Wilson signed the bill with ceremony. It had taken them longer than almost any other state in the country, but California had a welfare plan. (See chart, page 30)

On a practical political level, both conservatives and liberals can point to key elements they call victories. "Republicans wanted to ... fundamentally change the welfare system," Ashburn said. "This meets our goals."

Continued on page 25

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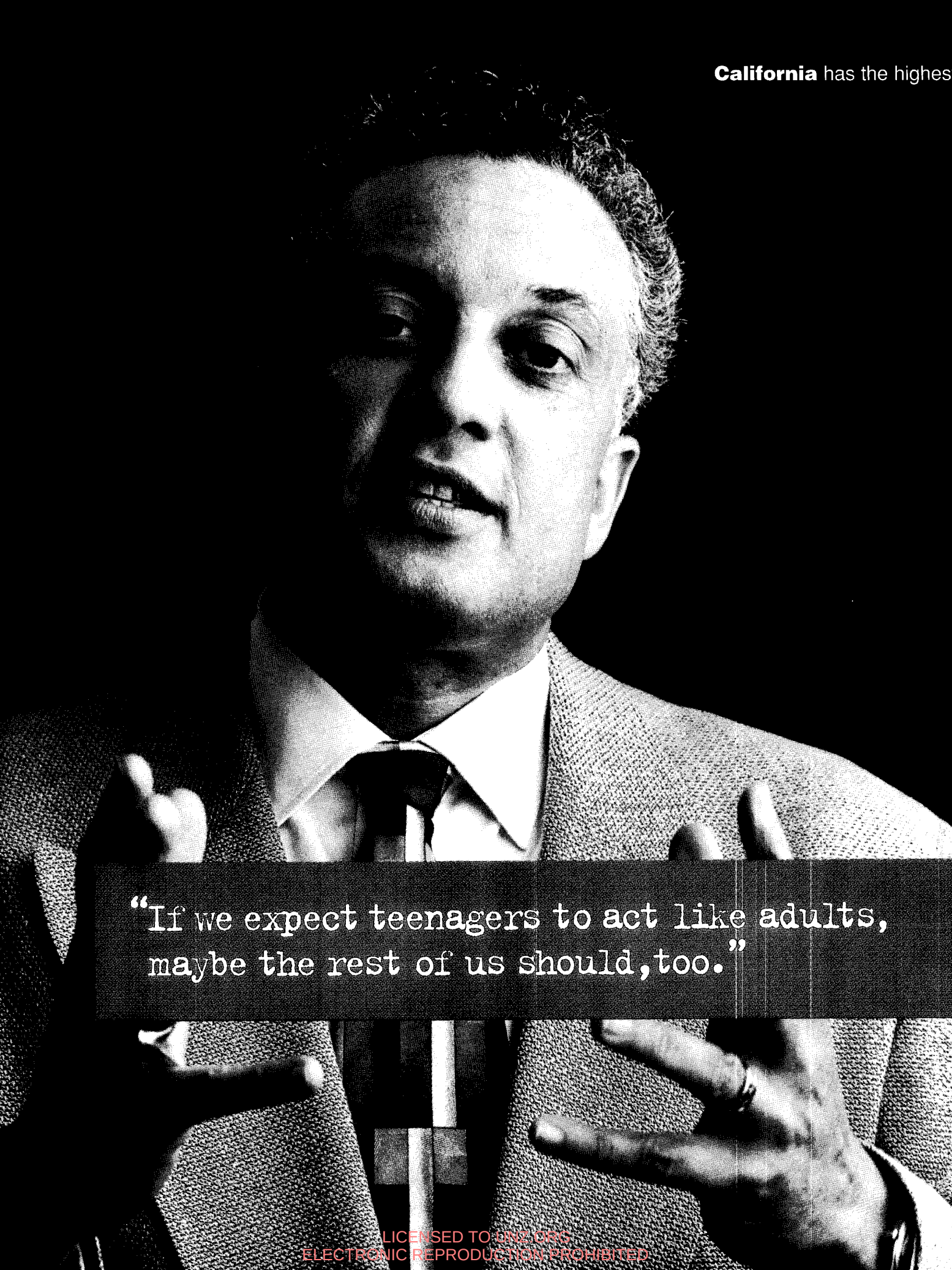
California has the highes



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teen pregnancy rate in the industrialized world. This series asks **why**...and what we should do.

As adults, we sometimes exaggerate how far we've traveled from our teenage selves. For example, to define ourselves as competent and responsible, we say teens are the opposite.

This is particularly true when adults think about adolescent sexuality. From the pinnacle of our adult experience, we forget teens today are often forced to make adult decisions on their own.

Wouldn't it be adult of us to make sure they have the care and information to make the most competent, responsible choices?

***FACT:** Teenagers are responsible for only one of four unintended pregnancies.*

Instead of blaming teenagers, let's give them some credit.

Going out of our way to help teens make their first adult decisions is of special value because so many adults—and adult institutions—pull away from adolescents just when they want to know what to do next. Why?

Maybe it's easier for communities to unite around the needs of younger children. Maybe teenagers start reminding adults too much of themselves.

Whatever the reason, adults withdraw resources and emotional support, justifying the move by calling teens 'trouble.'

Yet a glance at the numbers shows adults are more trouble than teenagers. More adults use more drugs, for example. And more of them harm juveniles than the other way around. Let's give teens some credit.

In fact, maybe we should be concerned about adult behavior.

If we want to truly assist teens through the rich developmental time of adolescence, we must come to terms with the influence of our own actions. Unwed birth rates have soared higher for adults than for teens. And most unintended pregnancies occur among adults.

Before we blame teens for their sexual behaviors, let's look at the society we, as adults, have created—a society filled with sexual imagery but lacking many of the educational and community supports that motivate young people to set goals.

Adults can support efforts to help teens make the best decisions.

Try to remember how many questions you had as a teen, how it felt to become sexually aware, decide what you wanted to do in life, and figure out the best choices.

Teens are finding their way. We can help them by creating places in our communities that actually welcome teens.

***FACT:** California teens reflect the adult trend in unwed childbearing, but get all the blame.*

Places that break down the walls of health, educational and religious institutions that too often view teenagers as dangerous, instead of what they really are—our future.

Teens are just people learning to see problems whole and find the best answer.

As adults, shouldn't we join them?

Rev. Jacob Moody directs S.F.'s Balboa Teen Health Center and is past president of the National Assembly on School-Based Health Care.

This is one of many views of teen pregnancy in California. To consider the full range, send for our **free** reprint series by completing this coupon.

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Public Media Center Chart: CA Dept. of Health Services, 1995.

Teen pregnancy is an adult problem.

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"We took an oppose position on the final bill," said Casey McKeever, executive director of the Western Center on Law and Poverty, "but it is certainly far better than what he governor proposed initially.'

How successfully the plan will move the vast majority of welfare recipients to work remains to be seen. Few believe the shape of CalWORKs is written in stone. "This is all written in pencil. A lot of this stuff just isn't going to work," said a skeptical Assemblyman Don Perata (D-Alameda) shortly before the passage of the final bill. Department of Social Services Director Eloise Anderson, if more confident of the program's success, also says the program will inevitably evolve as data comes in on the success of its implementation. "This needs to be dynamic," she says. "As we learn things, we need to make changes."

Seven and a half contentious months long, the state's legislative debate over the shape of CalWORKs was nevertheless the easy part. With the governor's signature comes the mandate for counties to turn the law into a workable welfare system with very real consequences for the individuals on assistance. Though most counties already have a GAIN welfare-to-work program in place on which to model their new system, most have focused on only a quarter or less of the recipient population and often have not included the longtime recipients who will have the most difficult time finding and keeping work. Local governments now are faced with the herculean task of quickly developing and delivering an array of services — child care, transportation, job training and placement, and community service jobs — for a caseload several times larger than that which most have been serving under GAIN.

> Everyone's crossing their fingers and hoping the economy remains strong. That's the wild card in all this.
>
> — Frank Mecca
> California Welfare Directors Association

"I don't think the biggest challenge is conceptual design," said Frank Mecca, the executive director of the California Welfare Directors' Association. "I think the biggest challenge is the scale of the activities, and the speed with which [counties] have to roll them out."

CalWORKs provides considerable flexibility for counties to design their own plans and set their own standards in areas such as work requirements and exemptions, while retaining statewide cash benefit levels and eligibility criteria. In order to implement their ideas, each county must submit a plan to the state by the end of the year detailing how it will develop and deliver the associated services. These plans will take effect in January of 1998, which is when recipients' 60-month federal lifetime limit begins to tick. It could be as long as a year before individuals' more abbreviated state time limits kick in, however, meaning some may have used a year of their lifetime eligibility before winning access to the heightened level of transition services available under CalWORKs.

Counties do have considerable incentive to cut their

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rolls quickly, as the law allows them to keep 75 percent of the savings realized as recipients leave the rolls for jobs. The remaining 25 percent of savings dollars will be distributed to local governments across the state, allowing counties with particularly high unemployment rates or otherwise difficult-to-place populations to share in the financial successes — if, indeed, the program is successful — of the reform effort.

Even with this carrot, implementation of the county plans will likely produce some significant growing pains. Child care will be a particularly tricky issue. With hundreds of millions of new dollars slated to subsidize welfare recipients' care, CalWORKs theoretically contains ample funds in the early years — but advocates worry that the large number of parents pushed into the job market will create a shortage of child care slots, particularly in the realm of hard-to-find infant care. A recent survey of Sacramento providers showed that the county could lack as many as 5,000 child care slots if only the minimum 25 percent of parents initially required to work by the federal TANF legislation entered the job market.The shortage is even greater under the mandates of the new state law.

Anderson and others in the Wilson administration — as well as some county directors — say that some of the slack can be taken up by unlicensed providers such as relatives or friends of recipients, or even by other recipients themselves. The state and counties must then do all they can to make sure these unlicensed providers are qualified, Anderson said. "We're trying to figure out how to make sure Grandma knows about new theories of child development." This can be done both through classroom training and more informal means, such as information posted at stores and churches, she added. But Aroner called this a short-term solution at best, pointing to research that suggests many parents look for licensed care once their work situation stabilizes. She sees a

The Buck Trust

Rich, tony Marin County has a little extra help coping with the new era of welfare reform — a $656 million endowment that provides as much as $25 million a year to be spent on the county's needy. Needy? In Marin?

By Lisa Corbett

This is the era of welfare reform — a time when California and its 58 counties must create a new system of support for the poor and disadvantaged. But one of those counties has the luxury of spending a lot less angst and energy learning to cope — wealthy, tony Marin County.

To many, Marin County is an embarrassment of riches. Tethered to San Francisco by the world-famous Golden Gate Bridge and bordered east and west by scenic coastline, the county is home to 34,000 acres of parkland, including the Muir Woods National Mounument and the Point Reyes National Seashore. Marin towns like Ross, Belvedere, Tiburon and Mill Valley are synonymous with California living at its best. With a population just under a quarter of a million people, Marin boasts the state's highest median household income — more than $59,000, a figure 18 percent higher than the Bay Area, 36 percent higher than California statewide and 62 percent higher than the country as a whole. Home prices average $354,200.

And then, there is the Marin Community Foundation, an entity sitting atop a $656 million endowment from the Buck Trust — money to be spent only in Marin.

The Marin Community Foundation was born out of litigation between the San Francisco Foundation and Marin County over the will of a wealthy Marin resident, Beryl Buck, who inherited $15 million in Belridge Oil Company stock from her husband. She established a philanthropic trust and bequeathed it to the San

Lisa Corbett is a freelance writer from Marin County.

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potential for serious child-care shortages within three years unless more money is invested in shoring up the child care system.

Even if the practical questions of delivering services are solved, the fate of CalWORKs ultimately rests on something outside the control of policy-makers: the economy. According to the nonpartisan California Budget Project, the state gained a net 253,200 jobs in 1996, and is on its way to nearly doubling that figure this year. The state Employment Development Department has estimated that on average, the total number of state jobs will increase by nearly 269,000 per year through 2005.

This is undeniably the mark of a strong economy, but the numbers of potential job seekers are also striking. The California Budget Project estimated that at the end of 1996, the state had more than 656,000 AFDC households containing adults likely to run up against the federal time limits. Since that time, caseload has eased, but the numbers remain high. In addition to this group, the Budget Project identified more than a million unemployed persons not on public assistance, more than 89,000 employable General Assistance recipients, more than 105,000 college graduates, nearly 273,000 public high school graduates, and more than a million currently "underemployed" individuals, who are largely involuntarily part-time workers. All of these groups potentially will be competing for the same pool of newly created jobs as CalWORKs recipients.

Further exacerbating the problems of job seekers are regional disparities in employment, noted California Budget Project Executive Director Jean Ross. "Even during periods of strong economic growth ... you have places like Fresno County, which has 15 percent-plus unemployment," Ross said.

Anderson and other CalWORKs supporters argue that

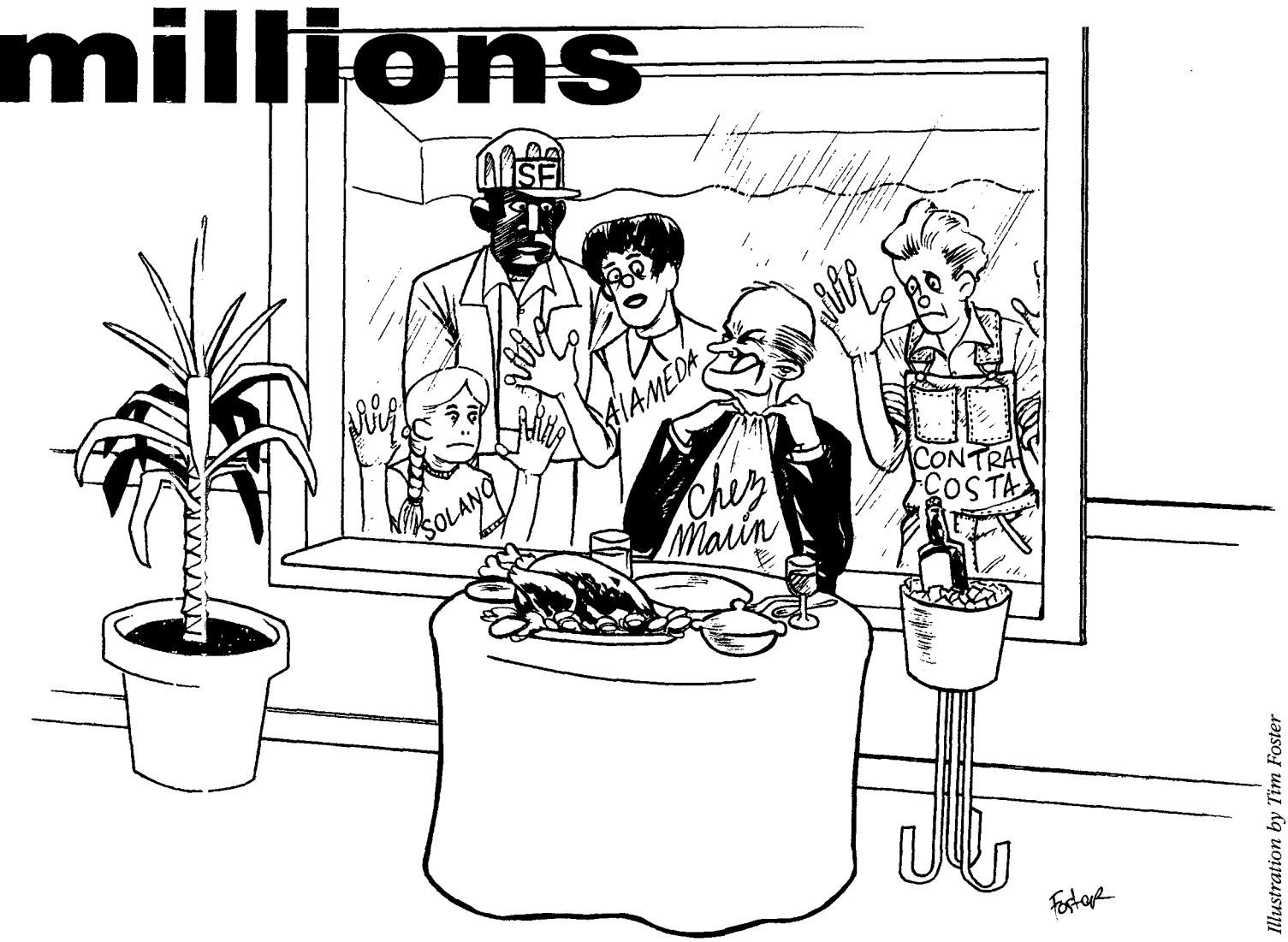

Illustration by Tim Foster

Francisco Foundation upon her death in 1975. Her will stipulated that income from the trust would be used to care for the needy and for other nonprofit charitable, religious or educational purposes — but only in Marin County. At the time, Buck could not envision the chain of events that would swell her endowment beyond all expectations, for before her estate was settled, then-President Jimmy Carter deregulated oil, Shell Oil bought out Belridge and the $15 million of Beryl

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welfare recipients should move to places where jobs are available, and that the program's "diversion" payments — one-time grants of up to three times the level of a monthly benefit check that can be applied to expenses such as car repair or moving costs — can help facilitate such a move. Ross says that approach doesn't make sense in areas such as San Francisco and Santa Clara County, where jobs are relatively plentiful but living costs have skyrocketed. "It doesn't make sense to tell people to go where the jobs are if you're telling them to go where a one-bedroom apartment rents for $1000 a month," she warned.

Agricultural areas, which often have high unemployment rates and seasonally employed workers who draw public assistance funds during the off-seasons, may have considerable problems efficiently matching workers with long-term jobs. Once these seasonal workers reach the end of their state and federal time limits, their on-again, off-again work and aid rotation will no longer be viable. This puts pressure on those recipients to find another means of living — and threatens what has been a key source of labor for growers in the state. Anderson and others in Wilson's administration are keenly aware that this subsector of the economy could present problems, but say they don't yet have a definitive solution.

The state's business community, which ultimately will be responsible for hiring the hundreds of thousands of recipients who will be looking for work, has reacted with mixed emotions to the CalWORKs program. "In the legislation passed, there wasn't much for either employers as incentives for hiring people coming off of work or for providing protection to employers hiring [recipients]," said Fred Main, a vice president and general counsel for the state Chamber of Commerce. "It kind of wound up doing no harm rather than doing anything positive." Main's group and other business groups had hoped the program would include stronger legal protections against employee lawsuits and

Buck's estate became more than a quarter of a *billion* dollars. It has since more than doubled, generating $25 million a year to be spent on the needy of Marin County.

Some might argue that "the needy of Marin County" is an oxymoron — which is one reason why the endowment has garnered its share of unflattering national attention and even the raised eyebrow of the California Attorney General's Office, which once studied whether a saturation of needs had been reached in the county. Even the San Francisco Foundation itself, through its trustees, challenged the geographical restriction of the will in a 1984 lawsuit. Foundation trustees sued to amend the Marin-only clause in order to permit the spread of Buck Trust funds to the needy throughout the Bay Area. Marin officials balked, and the matter ended up in court. Marin won the bitter dispute, causing the San Francisco Foundation to wash its hands of the trust. Administration was handed over to the Marin Community Foundation in 1987.

Contrary to myth and Martin Mull movies, Marin has its share of poor. People assume that either Marin is so blessed that everyone is living the royal life or the foundation can solve whatever problems exist, says Dr. Thomas Peters, Marin County's director of Health and Human Services. Yet, the myth does not quite square with reality, for 22 percent of the county's population is considered low income, with household income of less than $25,000 a year (adjusted for the cost of living in the Bay Area). And the county's high cost of housing has caused severe overcrowding and rental shortages in the concentrated pockets of poverty in east San Rafael and Marin City. The ills of poverty, homelessness, substance abuse, domestic violence, hate crimes, racism and the problems associated with at-risk youth exist even in a rich enclave such as Marin.

The Marin County Foundation has three major projects, established in the wake of the court case. Those projects operate as component parts of the foundation but are separately incorporated and administered: the Buck Center for Research on Aging, the Marin Institute for the Prevention of Alcohol and Other Drug Problems, and the Beryl Buck Institute for Education. During its decade of operation, the foundation worked hard to develop its own policies for grant-making and not simply be the offspring of its predecessor. The San Francisco Foundation was criticized for its heavy-handedness in dictating nonprofit policy-making. MCF, on the other hand, has concentrated its considerable financial and technical resources on priming nonprofits and government agencies to work together to make services more accessible to the needy.

So, how is the money spent? According to Peters, perhaps 25 percent goes to health and human needs programs. "Compared to our budget of $83 million, it's a drop in the bucket. But what I have appreciated is that MCF uses the funding as seed money, encouragement money, so we can hold things together and reach many if not most kids, families and individuals that need assistance," says Peters.

Community foundations by design distributue funds very broadly over a variety of fields, says Marin Council of Agencies Executive Director Sue Pollack, who represents about 140 nonprofits in the county. "The Marin Foundation has stimulated nonprofits to communicate and understand each other's goals," she says. "The county and the foundation have fostered a public-private partnership, which puts Marin in a good position to respond to changes due to welfare reform."

In 1992 the county conducted a study of the needs of 2,500 homeless persons and the capacity for existing providers to respond. The study revealed duplication of services and

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state tax incentives to hire workers from the welfare rolls, none of which made it into the final cut. Main does say that federal tax incentives will provide some marginal incentive to hire welfare recipients, but largely to those "inclined to do the right thing in the first place."

Democrats bemoan the effective loss of a piece sponsored by Senator John Vasconcellos (D-San Jose) aimed at bringing together local welfare agencies, community colleges and local businesses to determine what kind of jobs are needed in each community. A key component was to have used welfare training dollars to train existing workers to take higher-skill jobs farther up the employment food chain. This would in turn free up the lower-level jobs for welfare recipients, who would have been more difficult to train for the high-skill jobs. This program is still officially part of CalWORKs — but its original $23 million price tag was downsized to only $5 million in the final budget negotiations.

Ultimately, the ones best able to judge the success of the program will be welfare recipients themselves. Many may experience some initial pain under the new system, as changes in the way grants are determined drop the level of cash benefits. But increased levels of services — and the pressure of time limits and work requirements — may help more break through to the job market.

The question then is what happens next time the economy experiences a downturn and recipients who have begun to reach their lifetime time limits are unable to come back to assistance rolls. Few have an answer to this, other than pointing to existing non-welfare support mechanisms such as unemployment insurance. But even critics of CalWORKs say the federal government's TANF restrictions left the state few options — aside from hope and prayer — to plan for the inevitable economic downturn.

"Everyone's crossing their fingers and hoping the economy remains strong," Mecca says "That's the wild card in all this."

glaring gaps in areas such as treatment for substance abuse and mental illness. The foundation sponsored discussions between county government officials and representatives of nonprofits from transitional housing, health services, job training and education to address long-term solutions. Together, they formed the Marin County Housing and Services Continuum to provide an integrated stream of services helping the homeless move to permanent housing and self-supporting lifestyles.

Some refer to the Marin County Housing and Services Continuum as a shotgun marriage, says Homeward Bound Director John Wilson-Bugbee, one of the original participants in the collaboration. But, he says, it was really about committing to sharing resources, filling gaps and giving up turf wars over who was serving whom. Wilson-Bugbee says that no entity in the public sector other than the foundation was neutral enough to accomplish that accord among groups that traditionally competed for resources.

The Services Continuum is composed of 20 public and private agencies and individuals covering every aspect of homeless prevention in the county.The foundation granted $2.5 million in 1996 to the nonprofit agencies participating in the Housing and Services Continuum. The money came from three of the six foundation grant program areas, including community development, human needs, and education and training.

Human needs, which supports services for those with disabling physical, mental or social problems, receives the largest chunk of Buck money, about $8 million in 1996. One of the biggest recipients, Coordinated Youth Services Council (CYSC) teams up educators, social service agencies, probation officers and other public and private groups to create multi-service teams working with families and children. The council is at the forefront of a worldwide movement, says CYSC Director Cindy Meyers, where public and private agencies are treating the needs of children and families as a unit, putting the family in the driver's seat with service providers to coordinate the sometimes conflicting goals of treatment. "We are trying to blend public funding streams, waive conflicting regulations and restrictions and look at what's going on in the family as a whole," she says. "We couldn't achieve the same level of integration without MCF funding." The CYSC received about $400,000 from the foundation in 1996.

More than $4 million in grants goes to education and training, which receives the third-largest slice of the Buck money pie. Nearly half of that amount supports the Marin Education Fund established by the San Francisco Foundation in 1981. The fund provides scholarship money to Marin's neediest students for secondary education, vocational training and career counseling. A child-care scholarship program helps bridge the gap for working parents trying to finish school and build better job skills.

The arts also receive a share of Buck dollars. About $1.5 million in grants helped artists and art organizations. The MCF helped the New York-based Poets and Writers Program expand its regional scope to Marin. Writers work primarily with older adults like Alzheimer's patients in senior centers, reading, composing and sharing their work. The Poets in Schools Program visits juvenile diversion programs and elementary and secondary schools, hoping to broaden appreciation for literature and encouraging creative expression among students.

"Philanthropy is a complex business," says Marin Council of Agencies Director Pollack. "There is no question the Buck fund is a tremendous resource and a catch-22 for nonprofits. If they don't receive some Buck money, it's difficult to attract other sources of funding. But the foundation isn't just a big gravy train. It has given agencies more stability, and encouraged talented agencies and staff to develop new and creative responses to the county's problem."

It is a catch-22 other California counties wish they could have as well.

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Welfare:
the final compromise

The plans outlined below give an idea of how much each negotiating party gave up. The first column is the governor's January proposal. The Democratic plan is the original leadership outline released well before the conference committee finished its work, producing a more moderate final "Democratic plan." The final column reflects the existing CalWORKs law.

Wilson Plan California Temporary Assistance Plan (CalTAP)	Legislative Democrats Welfare-to-Work	CalWORKs
Time limits		
• Two years for current recipients • One year for new recipients • Five year lifetime limit	• Three years for recipients who need job training • Five years for difficult-to-place recipients • Five-year lifetime limit	• Two years for current recipients • 18 months for new recipients, with optional six month county extension • Community service jobs available from counties up to five year life time limit
Work requirements		
• 32-35 hours per week of "work activities," depending on family status • Counties could provide community service jobs for six months per recipient	• After three months, recipient must enter job training program • Community service jobs available from counties after two years	• 20 hours per week until mid-1999, then rises to 32 hours for single parents • 35 hours per week for two-parent families
Grant level		
• Maximum of $1,105 monthly grant per family • 15 percent cut after six months	• Keeps existing grant levels	• Keeps existing grant level, with slight modifications
Legal immigrants		
• Eligible if immigrated before 8/22/96 • No state funding for food stamps	• Eligible for program • Contains funds to cover most immigrants cut from SSI and food stamp rolls	• Eligible for program • State food stamp program for children and seniors only
Safety net		
• Non-cash assistance available for children whose families have been cut off	• Some funds available after five-year limit, or for children whose parents are expelled from program	• Child portion of grant continues after parent loses eligibility
Drug felons		
• Not eligible for grant	• Eligible for grant	• Not eligible for grant
General assistance		
• Relieve counties of mandate. Counties may opt to continue payments	• State would pay 30% of average grant, but county mandate is kept	• Current county mandate unchanged

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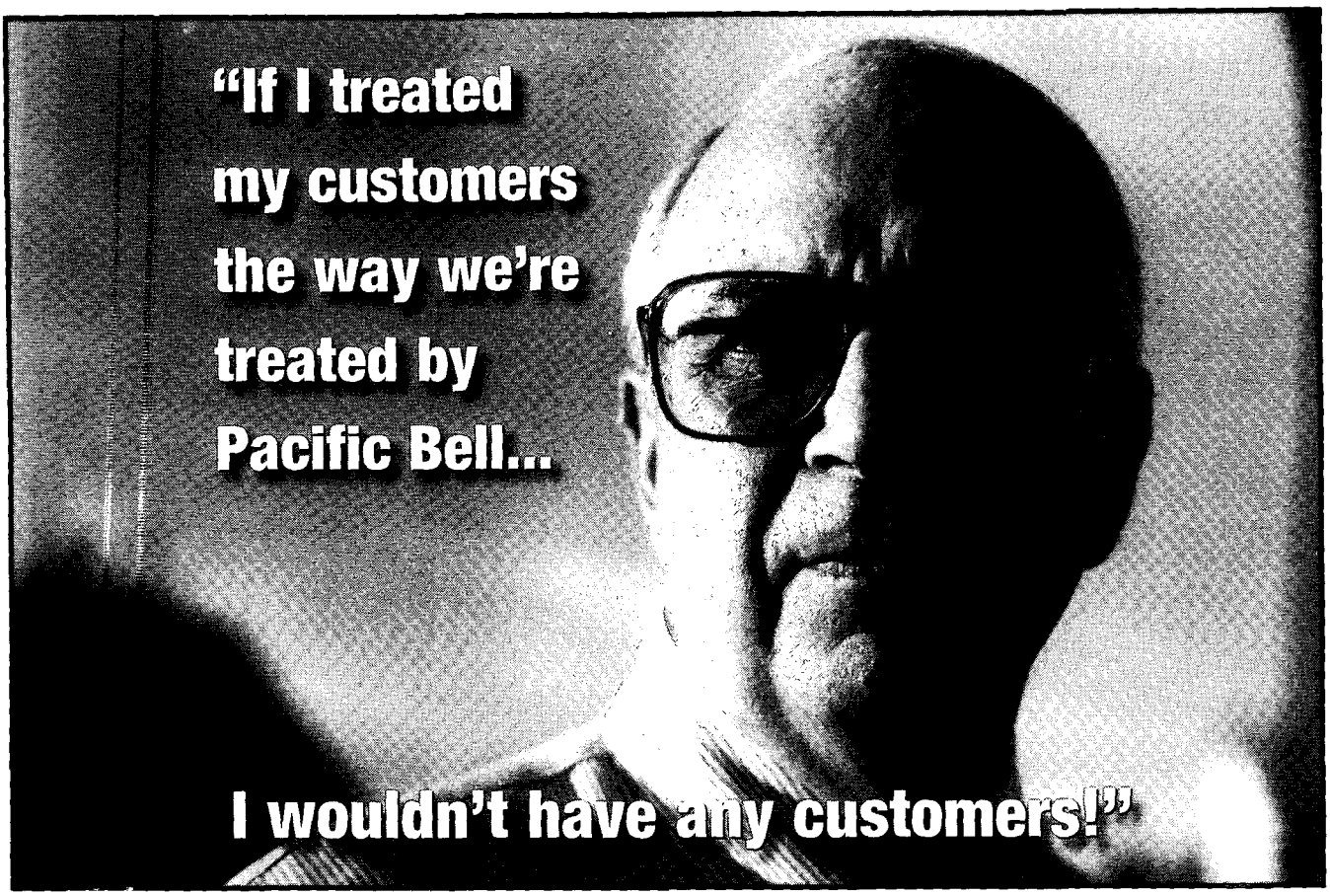

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Shadow

Getting voters to approve an initiative idea isn't enough anymore. Now writers of ballot measures must also pass muster with an increasingly testy judiciary

by Charles M. Price

It seemed like the textbook example of direct democracy. Failing session after session in the Legislature, supporters of an open primary system for California found that the only way they could get any kind of hearing for their idea was to take it to the voters. With the help of some financial benefactors to buy petition signatures, the issue snuck onto the March 1996 ballot. A sleeper in a year of controversy over tort reform, Proposition 198 didn't catch the public eye until late, and even then, the simplicity of the idea seemed to have appeal. Despite being branded a bad idea by both political parties, the Open Primary Initiative sailed through with 60 percent of the vote.

That's it...party over, right? Wrong!

Even though three other states have operated under the open primary format for years, California's open primary measure is under attack in the federal courts. Moreover, previous federal court decisions on political parties suggest the possibility that it will be rejected by the courts and never implemented. The open primary battle is one of several court tests being aimed at successful ballot initiatives of the

Charles M. Price is a professor of political science at California State University, Chico, and a frequent contributor to California Journal.

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Government

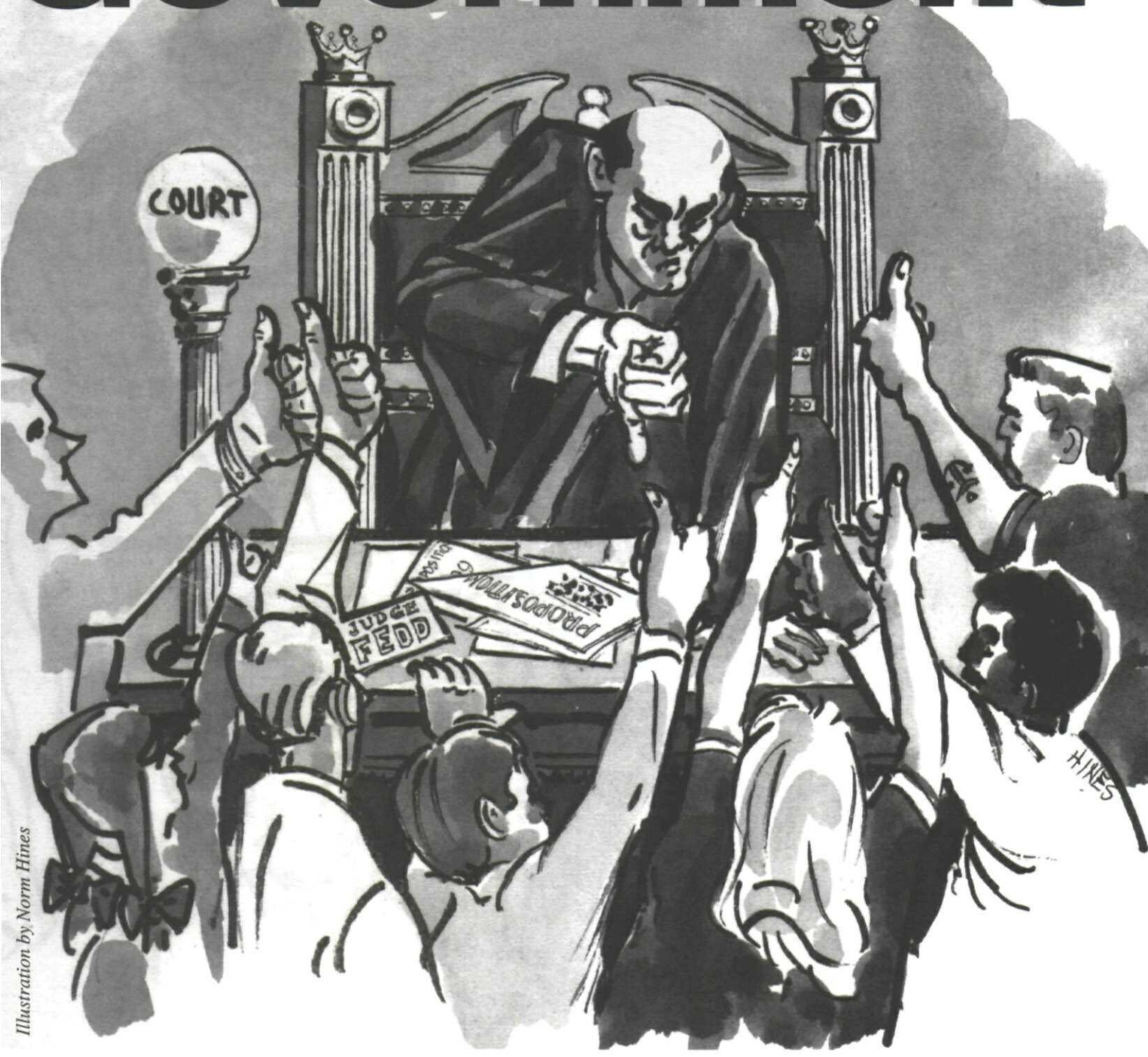

Illustration by Norm Hines

recent past. Increasingly, the courts have become an integral part of the initiative process.

The initiative process has always been a crap shoot, but the odds against an initiative becoming a law or constitutional amendment these days are lengthening. In the 1990s, an average of about 70 initiatives have been filed every two years; of these, typically only about 12 will actually qualify for the ballot. On average, voters are likely to approve only about four of the 12 qualified initiatives. But even after passing that test, three of the four voter-approved initiatives will likely be challenged in court. One may come through unscathed; another may be partially modified, and the third may be substantially revised or struck down altogether by the courts. Lawyers who draft initiatives invariably include a severability clause so that if one section of the initiative is declared unconstitutional, the rest can remain intact.

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For voters, the striking down of an initiative can lead to further disillusionment about the value of their participation in the political process. But to many experts, the courts are an essential buffer protecting that public from the effects of poorly crafted, populist law. Indeed, now-deceased UCLA law professor Julian Eule argued in a Yale Law Review article a few years ago that the court should be more vigilant in scrutinizing initiative-made law because the initiative process lacked the checks and balances of the legislative process.

"The judiciary stands alone in guarding against the evils incident to transient, impassioned majorities that the constitution seeks to dissipate," wrote Eule.

Technically, this legal challenge can begin as soon as the initiative is formally filed with the attorney general, but usually initiative opponents wait to see if the initiative is approved before beginning legal action. This saves legal fees. While the court led by former state Chief Justice Rose Bird tossed out two qualified — and highly controversial — initiatives from the ballot during her tenure, almost all legal challenges to initiatives have come after they have been approved by voters.

California initiatives (and legislative laws) can be legally challenged depending upon the legal issues entailed, in either state or federal courts. Of 31 initiatives approved between 1964 and 1988, 14 are fully in effect, 14 others were modified by the court and three have been overturned. The closer judicial scrutiny began in the early 1970s, led by courts with Democrat-appointed liberal majorities. Initiatives to restrict school busing and allow landlords to discriminate in renting practices were struck down, as were spending limits included in the landmark Political Reform Act of 1974 [Proposition 9]. There were also the preemptive challenges against reapportionment and budget initiatives.

The conservative majorities of the 1980s and 1990s have also tossed out initiatives they felt were badly written. Proposition 105, a goulash of consumer protections and political reforms passed in 1988, was rejected for violating the state constitution's provision stipulating that initiatives are to address only a single subject — the so-called "single subject rule." In addition, the California Supreme Court declared Proposition 68, a June 1988 campaign reform measure, invalid because it was approved by voters with a lesser margin than another competing campaign reform initiative, Proposition 73. The court even passed on the opportunity to graft non-conflicting portions of Proposition 68 onto Proposition 73, despite having the legal authority to do so. More recently, Superior Court Judge William Cahill has temporarily held up implementation of Proposition 213, which would limit the ability of uninsured drivers to collect legal settlements in traffic accidents.

Since the mid-1970s, California courts have, for the most

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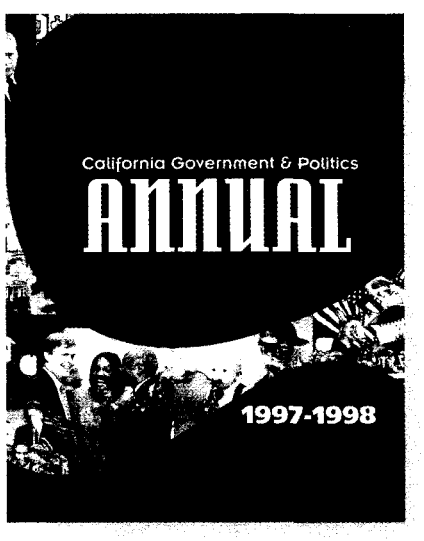

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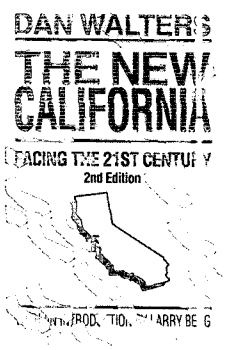

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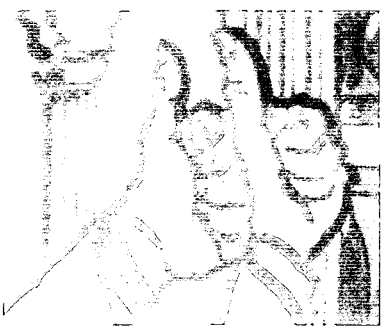
part, tried to be as protective of initiative law as possible. In its opinion upholding legislative term limits in Proposition 140, the state Supreme Court opined that "although the legislative power under our state Constitution is vested in the Legislature, 'the people reserve to themselves the powers of initiative and referendum.' Accordingly, the initiative power must be liberally construed to promote the democratic process. Indeed, it is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise." Those words echoed the opinion of the liberal-dominated state Supreme Court that upheld the constitutionality of Proposition 13 in 1978.

"It is our solemn duty to jealously guard the initiative process, it being one of the precious rights of our democratic process," said the court.

Although it seems reluctant to summarily dismiss entire initiatives, the state courts have used a scalpel to remove particular provisions or sections of initiatives which don't meet its constitutional tests. Although it largely left Proposition 140 intact, the court did remove the measure's retroactive sanction against legislators' pensions. A provision of 1990's Victims Bill of Rights [Proposition 115] was removed because the court felt its link to federal law carried it beyond the bounds of what voters are constitutionally permitted to decide at the ballot box. Most recently, the California Supreme Court unanimously modified the very popular Three Strikes Initiative, as well as an almost identical law was passed by the legislature, to give trial judges the same right to strike prior felony convictions as is given to district attorneys.

Perhaps the most celebrated case of judicial tinkering came with Proposition 103, the car insurance initiative passed in 1988. The complicated insurance measure imposed regulation on the insurance industry, provided for an elected insurance commissioner, and commanded an automatic 20 percent rate rollback for all insurance customers. In upholding Proposition 103, the court, in essence, rewrote the initiative. The rebate provision was left intact, but the court added a qualifier that allowed insurers to petition for smaller rollbacks in order to preserve a reasonable rate of return. The elected insurance commissioner was left intact, as were most of the commissioner's regulatory powers. The decision had all the earmarks of a political compromise, as it pleased neither the insurers nor the backers of Proposition 103. It did, however, move the legal wrangling away from the initiative itself and toward the regulatory process by which it is implemented.

While federal courts historically have given state initiatives closer scrutiny, over the last decade or so the federal courts have become increasingly activist in overturning California initiatives.



An area of consistent federal court involvement has been political reform. Proposition 73, a campaign finance initiative authored by three California state legislators, was approved by voters in 1988. A

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year and a half later, the 9th U.S. Circuit Court of Appeals struck down most of the provisions of Proposition 73 on the grounds that it provided special advantages to incumbents and limited free speech. This past year's voter-approved campaign finance initiative, Proposition 208, is under challenge in the federal courts, and many of the same arguments used to take out Proposition 73 were repeated. While the final ruling was still pending as of early September, Judge Lawrence Karlton has already tossed out one component of the initiative, a provision that restricts the ability of political parties to raise and spend unlimited amounts of money. Not coincidentally, Karlton was the judge who tossed out Proposition 73 when it reached his court in 1990.

On average, voters are likely to approve only about four of the 12 qualified initiatives. But even after passing that test, three of the four voter-approved initiatives will likely be challenged in court.

The federal courts also have been active in reassessing three hot-button "wedge-issue" initiatives backed by Governor Pete Wilson and approved by voters during the 1990s. Proposition 187, Wilson's illegal immigration measure, was slapped with a preliminary injunction almost immediately after its approval in November, 1994. Although she has not yet issued a final ruling in the case, federal District Court Judge Mariana Pfaelzer has issued a series of decisions proclaiming major portions of the measure unconstitutional, including its reporting provisions and denial of public school and health benefits. Pfaelzer has also questioned California's jurisdiction to set up its own immigration policy.

The heated content in such initiatives have also spotlighted the differences between how judges perceive the law. The federal courts recently overturned a key provision of Proposition 140, which had previously been upheld by the state Supreme Court. U.S. District Judge Claudia Wilken ruled that the lifetime ban on seeking the same office once termed out was an infringement on the constitutional rights not only of the officeholders but of their constituents as well. Wilken has stayed implementation of her decision pending an appeal, and when that appeal was heard, the three-judge panel seemed internally conflicted about which way to go. It is considered likely that the issue ultimately will wind up before the U.S. Supreme Court.

A more obvious case of judicial conflict came with another Wilson-backed initiative, Proposition 209, eliminating affirmative action. The initiative was temporarily enjoined when opponents found a sympathetic ear in a liberal, African American, former ACLU activist, U.S. District Judge Thelton Henderson. Unlike Proposition 187, though, Henderson's injunction was almost immediately overturned by a three-judge appeals panel. In an unusually sharp personal attack, the three judges wrote that Henderson misunderstood the pertinent legal principles in Proposition 209 and thwarted the people's will. The court's bow to direct democracy was uncharacteristic. "A system which permits one judge to block with a stroke of the pen what 4,736,180 (actually, 5,268,462) state residents voted to enact as law tests the integrity of our constitutional democracy," wrote the court. Although it too is expected to reach the U.S. Supreme Court, Proposition 209 has substantially gone into effect.

Of course, some argue this type of intervention is exactly the role that the court is supposed to play in the American system. As USC Law Professor Erwin Chemerinsky noted, "It does not matter if 250 million people like a law, a judge must invalidate it if it violates the Constitution."

Few question the legitimacy of the court's role. But why lately have federal courts been so aggressive in striking down initiatives, while California courts have tended to be supportive of them? One important reason is that California Supreme and Appeals court judges are elected for set terms and must be confirmed by the voters. Federal judges, on the other hand, after being nominated by the president and ratified by the U.S. Senate, have lifetime appointments.

Prior to the late 1970s, the election of judges in California was hardly an issue, as nearly all received 95 percent affirmative votes in their confirmation efforts. The sea change, however, occurred with the appointment of Rose Bird. After a relatively narrow victory in her first confirmation vote, Bird was subjected to an intense opposition campaign centered around her stand on the death penalty. Eventually, she and two other justices were ousted by sizeable majorities in 1986.

While the Bird vote was generally viewed as a referendum on the death penalty, there appears to have been a lingering effect on the judicial process itself. Since 1986, most California Appeals and Supreme Court judges (liberal and conservative), have received on average a 40 percent "no" vote. Moreover, this "no" vote on judicial confirmations comes without any high-powered statewide organization urging voters to reject judicial incumbents. Because of this, some experts believe California courts must be cautious in modifying or striking down citizen-made law. Former California Supreme Court Justice Otto Kaus commented that for a state judge to ignore the impact of a highly politicized decision would be akin to "ignoring a crocodile in your bathtub."

Federal judges are not under the political gun because they're lifetime appointees. The Founding Fathers wanted federal judges to be independent and insulated from public or officeholder pressure. Because of the federal court's activist role on initiatives, some conservatives — including Attorney General Dan Lungren — have proposed a constitutional amendment requiring periodic confirmation elections for federal judges after they have been on the bench for a certain period of time.

For many, though, it's a question of apples and oranges. Lifetime appointments to the federal judicial system do encourage judicial independence, a laudable feature for American democracy. But California's confirmation votes for judges encourage accountability and sensitivity to the public, an equally laudable feature in a democracy. Perhaps, it is best to have this balance between the federal and California judicial systems. In any case, state and federal courts, will continue to play very significant roles in assessing the constitutionality of initiatives.

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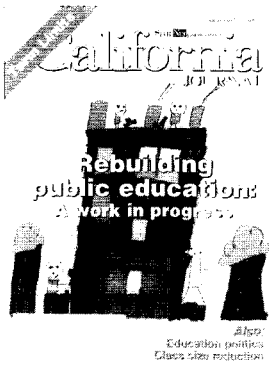

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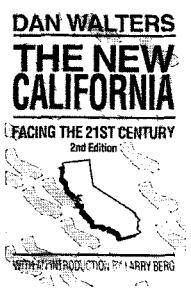

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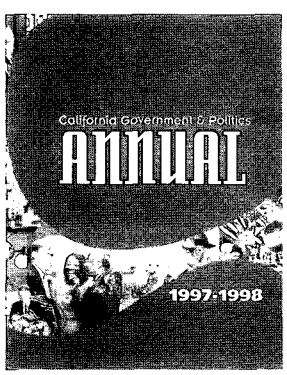

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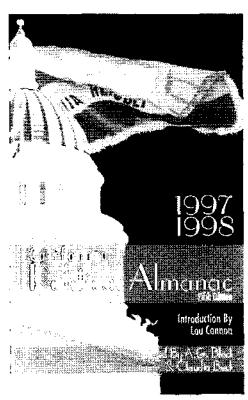

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The dial

When it ordered the breakup of local phone monopolies last year, Congress promised freewheeling competition and low local phone rates. It hasn't quite worked out that way.

by Steve Scott

Illustration by Norm HInes

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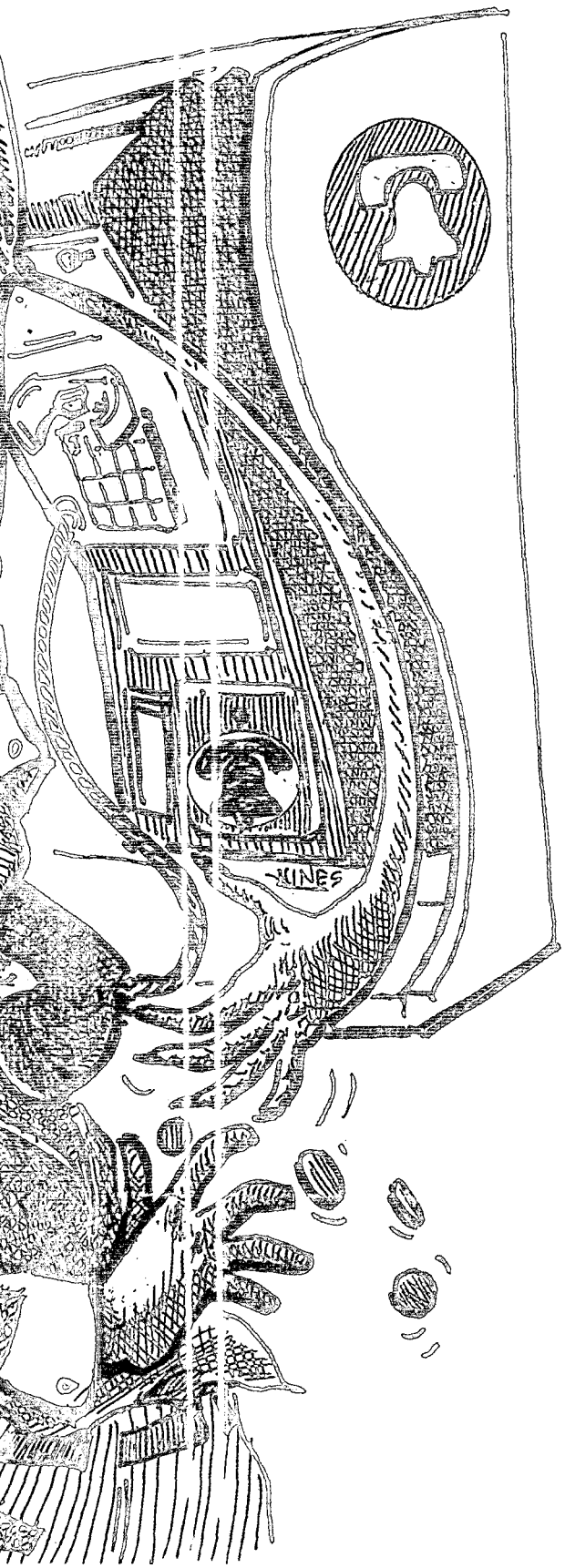
tone wars



Even though it has been 13 years since the federal government ordered the breakup of American Telephone and Telegraph, it is not at all uncommon to find people wistful for the days of the old Bell System. Sure, there has been an explosion in communications technology in the years since long distance service was opened to the free market. But the backwash of that explosion has been an often-mystifying fragmentation of providers, each with a separate mission — and a separate bill. Accompanying this fragmentation has been an inescapable marketing assault: If it isn't Candice Bergen throwing dimes at your television screen, it's a dinnertime phone pitch or an overstuffed mailbox.

Maybe Ma Bell wasn't the most nurturing mother around, but her indestructible phones always had tone, her operators were always living people, and her bill covered everything from a frayed receiver cord to a lightning strike on the transmission lines.

For those who still wish they could just make all that mess go away, there's good news and bad news. The good news is that, thanks to Congress and the president, "one-stop shopping" is once again available as an option to consumers weary of the paper chase. The Telecommunications Act of 1996 requires that local telephone service — the last vestige of the old monopoly system — be opened up to competition. This means, among other things, that customers should have the option of buying all their communications services from the same company that delivers their dial tone.

And the bad news? Well, it seems this new law has sparked yet another corporate "War of the Worlds," this one pitting the long distance megaliths like MCI, Sprint, and ATT against the heretofore monopolistic local phone companies such as Pacific Bell and GTE. At stake in California is control of a $15 billion local phone market and some 27 million phone lines statewide. It's not the lines themselves that interest these companies so much as what they represent — conduits through which they can hawk paging, cellular, Internet, long distance and any other high-yield service they can come up with.

"The local market is the meal ticket," said Tom Long, a staff attorney with The Utility Reform Network [TURN], a San Francisco-based consumer group. "If you sign up a customer for local service, chances are that customer will use you for most or all of those services."

What has placed these corporate behemoths at each other's throats is the framework in the Telecommunications Act under which Pacific Bell, GTE, and other "local exchange companies" must give up their monopoly on the wires, switching, and other infrastructure which gets dial tone to

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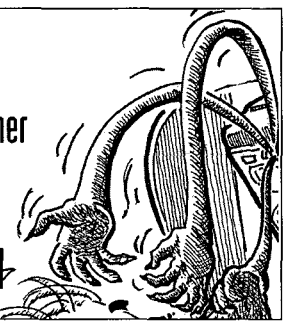
business and residential customers. The law sets out a 14-point checklist of requirements which the local providers must meet before their market can be deemed to be competitive. These include the "unbundling" of the individual components of local service (billing, repair, switching, operator service, etc.), the offering of service — bundled or unbundled — to competitors at wholesale rates, the ability of customers to take their old phone number with them to the new service, and so forth. Moreover, the local exchange companies have to do whatever it takes to make service transfer seamless, so it would take no longer to order a phone from one company than it did another.

The local market is the meal ticket. If you sign up a customer for local service, chances are that customer will use you for most or all of those services.

—Tom Long, The Utility Reform Network [TURN]



If they meet these requirements to the satisfaction of state and federal regulators, Pacific Bell will get a huge, juicy carrot — the right to enter and compete in the lucrative national and international long distance market, rather than just within their own local service areas. (Since it was not part of the old Bell System, GTE is already in the long distance market). The prospect of riding this $100 billion gravy train would seem to be all the incentive the local exchange companies would need to get local service unbundled and competitive as quickly as possible, and if you ask Pacific Bell, they'll tell you they've already done their part. California's dominant local provider points to a massive hiring program and millions of dollars invested in computer upgrades, all designed to facilitate orderly transfer of service to anyone who wants to switch. Competitors' orders are processed, they aren't blocked from access to operators, and the lines all work, they say.

"Any customer who wants to can get [local service] from somebody other than Pacific Bell," said Lee Bauman, the company's vice president of local competition. "One hundred percent have choice."

The long distance providers, though, paint a different picture. Not only is the market not competitive, the long distance companies say the local exchange carriers, especially Pacific Bell, have done everything in their power to block or hinder competition. According to the long distance providers, local carriers aren't unbundling their services fast enough or completely enough, and are charging them too much for those services they have unbundled. Pacific Bell, potential resellers say, has not given them access to customer databases, and they accuse the company of badgering customers who switch, threatening them with everything from service interruption to a loss of 911 emergency service.

"In some cases, in my view, it's just flat out intention to violate the law, said Jim Lewis, regional executive for MCI. "In others, perhaps its negligence. The effect is the same."

By most accounts, the biggest problem centers around the system of processing the orders placed by customers to change their service — known in industry parlance as the operational support systems. In a perfect post-Telecommunications Act world, switching local service should be no more complicated than switching long distance service. But prospective competitors say Pacific Bell's system of processing the orders is too labor intensive, requiring that each change order be manually keyed in before the switch over can take place. They claim Pacific Bell moved way too slowly in upgrading its own systems, and didn't hire enough additional people to handle a flood of change orders. The result: processing delays that ran into the weeks. Both MCI and ATT say the backlog forced them to suspend their attempts to market their local access service after less than six months.

"There's no organized process for implementing this," said Rick Witherington, ATT's vice president for government affairs in the Pacific region. "It's ad hoc and undisciplined."

If the prize for deconstructing its local monopoly is access to the incredibly lucrative long distance market, why would the local carriers stall competition? According to the long distance carriers, it's because they're scared of the competition. Local phone companies have enjoyed a monopoly over basic phone service for decades. They believe the local exchange carriers will allow only as much competition as they need to win access to the long distance market, then will return to their monopolistic practices.

"One thing we know about [Pacific Bell] is they need to be dragged kicking and screaming into the marketplace," said Lewis.

Ask the local carriers, though, and they'll say it is the long distance companies who are doing the "kicking and screaming," as well as most of the obstructing. While they concede there were some backlogs in processing orders to change service, Pacific Bell says it was only because the long distance giants refused to help facilitate the changeover to a competitive marketplace. The company has spent hundreds of millions on computer upgrades in an effort to accommodate competitors, but the long distance carriers refused to modify their systems to make it work. Moreover, claims Bauman, the long distance carriers refused to provide any forecasts of how many customers they expected to transfer.

"We hired people as rapidly as we could, but there was a period of time this spring, where the implementation intervals were not as fast as we wanted them to be," said Bauman. "If the competitors had forecast their volume, we would have been able to meet the demand."

Since the spring, said Bauman, Pacific Bell has improved its system, and now can electronically process change orders for residential and small business, with intervals in the "day or two" range. But the local carriers worry the new competitors aren't interested in the residential or small business customer. Pacific Bell believes MCI, ATT, and Sprint are interested mostly in "cherry picking" their biggest and best customers, leaving the local providers to handle low-volume callers and bear the burden for providing "universal service" to low-income customers.

"They steal the best customers, avoid the subsidized markets, and turn around and try to blame us for their own marketing strategies," said Pacific Bell spokesman Eddie Reeves.

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Local carriers say it is the long distance companies who fear competition. They point to a history which suggests customers in a newly-competitive market need a lot of urging to switch away from what they've always had. Thirteen years after the breakup of the Bell System, ATT still owns more than half of the national market for long distance service.

"They're going to do everything in their power to block us from competing with them in long distance," said Reeves. "They have a vested interest in trying to muddy the waters, raise any kind of doubt, so they can then go to the feds and say, 'Don't let them go into long distance yet.'"

That is the strategy of long distance companies, it has worked so far. Efforts by regional Bell operating companies (RBOCs) in other states to enter the long distance market have been universally rejected by the Federal Communications Commission, the agency charged with implementing the Telecommunications Act. In its most recent decision, involving Michigan-based Ameritech, the FCC cited many of the same problems being raised by MCI and ATT in their battle with Pacific Bell. The local carriers claim the FCC has overstepped its authority, and a recent federal court ruling in St. Louis removed the FCC's jurisdiction over the price local providers charge their prospective competitors.

"The proper place to set the terms and conditions for local service is with the state PUC, as opposed to having them set [in Washington], said Tom McCallion, GTE's regulatory and government affairs vice president.

While they have been somewhat less specific, state regulators have also generally been of the view that more could be done to open up local markets. Responding to complaints filed by all three long distance carriers, the state Public Utilities Commission issued a draft decision saying that, while Pacific Bell hadn't violated any laws, they still hadn't opened up the market enough to warrant entry into the long distance market in California. The PUC has also set up an investigative process to determine whether or not the local exchange carriers have been stalling competition.

"This is pretty much a national problem," said Karen Jones with the PUC's telecommunications division. "Different companies have taken different approaches, but I don't think anybody gets an 'A'." The PUC's efforts haven't kept the issue out of the courts in California, however. Walnut Creek-based Caltech, a local service reseller, has sued Pacific Bell for denying them access to the local market. "The PUC is more forgiving than a jury will be," said Caltech's attorney Maxwell Blecher. "They'll see more clearly that Pac Bell did this intentionally."

Regulators and judges are not the only people the combatants are trying to woo — long distance carriers have been aggressively taking their cases to the public. Last summer, MCI ran advertising touting its view of local competition in Sacramento-area newspapers. This year, an organization formed with seed money from ATT — Californians for Telecommunications Choice — began running radio and newspaper advertising directly attacking Pacific Bell. Executive director Anna Evashko insists her organization is a "broad-based coalition" which is actively fundraising, although she refused to give even a ballpark estimate of how much of the group's support comes from ATT. Pacific Bell says the group is an "Astroturf" organization — an ATT front masquerading as a consumer group, a charge Evashko denies.

As is usually the case when dissention rocks the corporate Olympus, it is the consumer who winds up dodging thunderbolts. For now, most consumer groups who are keeping tabs on the issue — even those not backed by ATT — tend to back the stand taken by the long distance companies with respect to Pacific Bell's resistance to competition. Many consumer groups fear that the company will allow only enough competition to pass muster with a more sympathetic PUC, getting them into the long distance market before their local service monopoly is broken.

"Pac Bell may have opened its market up in name, but it is in no way interested in actual competition or in helping the competitors do the job they need to do to create a truly competitive market," said Barry Fraser, staff attorney with Utility Consumers Action Network [UCAN].

Consumer activists are also critical of the long distance companies, accusing just about everyone involved in the dispute of deception — either intentional or inadvertent. "We have made calls on behalf of consumers and on our own, and we receive conflicting statements from everyone we've called," said Fraser. "As far as we're concerned, everyone is guilty." The consumer groups also say that, notwithstanding their corporate bluster, long distance providers have more to fear from Pacific Bell than Bell has to fear from them.

"Customers have ingrained in their minds that when they want to get local service, they go to Pacific Bell," said TURN's Tom Long. "That's why ATT is quaking in its boots about Pac Bell getting into long distance."

The biggest fear of consumer activists, though, concerns neither Pacific Bell nor GTE, ATT, MCI or Sprint. Rather it concerns the watchdogs — the PUC and the FCC. They believe the regulators have become so swept up in mediating the corporate rumble that they are ignoring consumer concerns about reliability of service, and its availability to low-income Californians. "Our concern is that the regulators will assume that once they wave their magic wands, that competition will exist, when in fact it doesn't," said Long. State Assemblywoman Diane Martinez (D-Whittier), who chairs the Assembly's Utilities and Commerce Committee, plans a series of interim hearings around the state to examine the advent of competition. She says she wants to make sure that competition isn't being used as an excuse to completely deregulate.

"If all we do is deregulate, you'll never see competition," said Martinez. "The same companies stealing money from us yesterday will be stealing money from us tomorrow."

Despite the concerns of consumer groups, the pace of local deregulation seems destined to move quickly, sparked largely by the desires of large carriers and large consumers. Many see parallels between the hurry-up approach of telecommunications deregulation and that which has just begun with the deregulation of electricity. Although the PUC insists such comparisons are "apples and oranges," consumer groups maintain there are lessons to be learned from the telecommunications struggle as the state embarks on electricity deregulation.

"Telephone is a pretty essential service ... but electricity is the most essential service," said Fraser. "If we start seeing the same problems with people trying to change electrical suppliers that we see with telephone suppliers, a lot of us could be in the dark."

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Washington Notes

perspective

by Dana Wilkie

A matter of facts

Radioactive isotopes and plutonium half-lives are not the stuff you drag out for party chatter, unless you never want to go to another party. This is the esoterica of low-level nuclear waste dumps. It is dense as mud. And just as exciting.

Yet some of our politicians — who can probably recollect their chemistry compounds no better than the rest of us — must slog through the political sludge of a place called Ward Valley, the Mojave Desert spot where Gov. Pete Wilson wants to build such a dump and where the Clinton administration, from all appearances, will never let him.

How do they get their minds around this muck? Take the key question in this nearly three-decade-long debate: Will radioactivity leak from the depository and contaminate the Colorado River, a drinking supply for millions of Californians? The answer, which the U.S. Interior Department insists on having before it will give the state 1,000 federal acres for the dump, requires a sophisticated understanding of nuclear science, geology, physics and meteorology, for starters. Who has the time?

Those with the time are the science junkies who live and breathe this stuff, some of whom already have a bias or two about nuclear waste, and an agenda besides. Armed with impressive nomenclature and the look of academia, they gush minutiae on "curies" and "chelating agents," crunch numbers beyond recognition, and can usually be found in committee hearings, feeding information to politicians with agendas closest to their own. Some counsel the dump's friends, others the dump's foes. They can whirl our heads not only with the facts, but with their manipulation of the facts, because few would have the gumption to challenge them.

A history on Ward Valley would take a few semesters. It spans 27 years and involves lawsuits, hearings, studies, tests and delay after delay. With the news of each setback, there is always hovering in the background a Los Angeles group — the Committee to Bridge the Gap — usually better-equipped than the politicians to opine, analyze, and toss around impressive statistics. The group is led by well-educated men with imposing knowledge of nuclear science. They are the dump's leading foes. They are also familiar faces in the offices of California U.S. Senator Barbara Boxer and U.S. Deputy Interior Secretary John Garamendi, two Democrats who seem forever prepared to cast yet another obstacle in the dump's path.

Now it seems the group — elected or appointed by no one but itself — has been almost single-handedly shaping national policy on nuclear waste. It turns out that the authoritative-sounding figures that Garamendi has been reciting at hearings here — the figures that spell doom for California under the shadow of Ward Valley and that Boxer uses to "prove" the dump is dangerous — do not come from the reputable sources the Interior Department says they do. They don't come from the U.S. Nuclear Regulatory Commission, the Southwestern Compact, the California Department of Health Services nor the U.S. Department of Energy, which the department's literature asserts. Instead, said one Energy Department analyst, "It looks as though [the] Interior [Department] has used Committee to Bridge the Gap numbers verbatim."

So upset were Nuclear Regulatory commissioners at being misrepresented this way that the chairwoman wrote Interior Secretary Bruce Babbitt to complain. A Garamendi spokesman vowed that "we're going to get this all worked out." The whole mess feeds the perception, articulated this summer by the U.S. General Accounting Office, that Babbitt's department lacks the expertise to review Ward Valley's safety and fails to turn to the very folks — the Regulatory Commission, for instance — who could help. Instead, Babbitt's office, and Boxer's for that matter, consistently turn to a single, one-note group whose leaders, while bright, can hardly rival the commission in the expertise department.

Bad as this makes these leaders look, this latest flap won't embarrass for long, nor make much difference. If senators and presidential appointees can't stop the dump, lawsuits will. But it does inspire a question: Just who's running things in the federal government? Is it the elected senator and the deputy cabinet secretary assigned by the president to find out the facts on nuclear-waste dumps?

Or is it a shadow Los Angeles group that many say is hell bent on sinking not only Ward Valley, but nuclear power and research altogether?

Dana Wilkie is a Washington correspondent for Copley News Service and The San Diego Union-Tribune.

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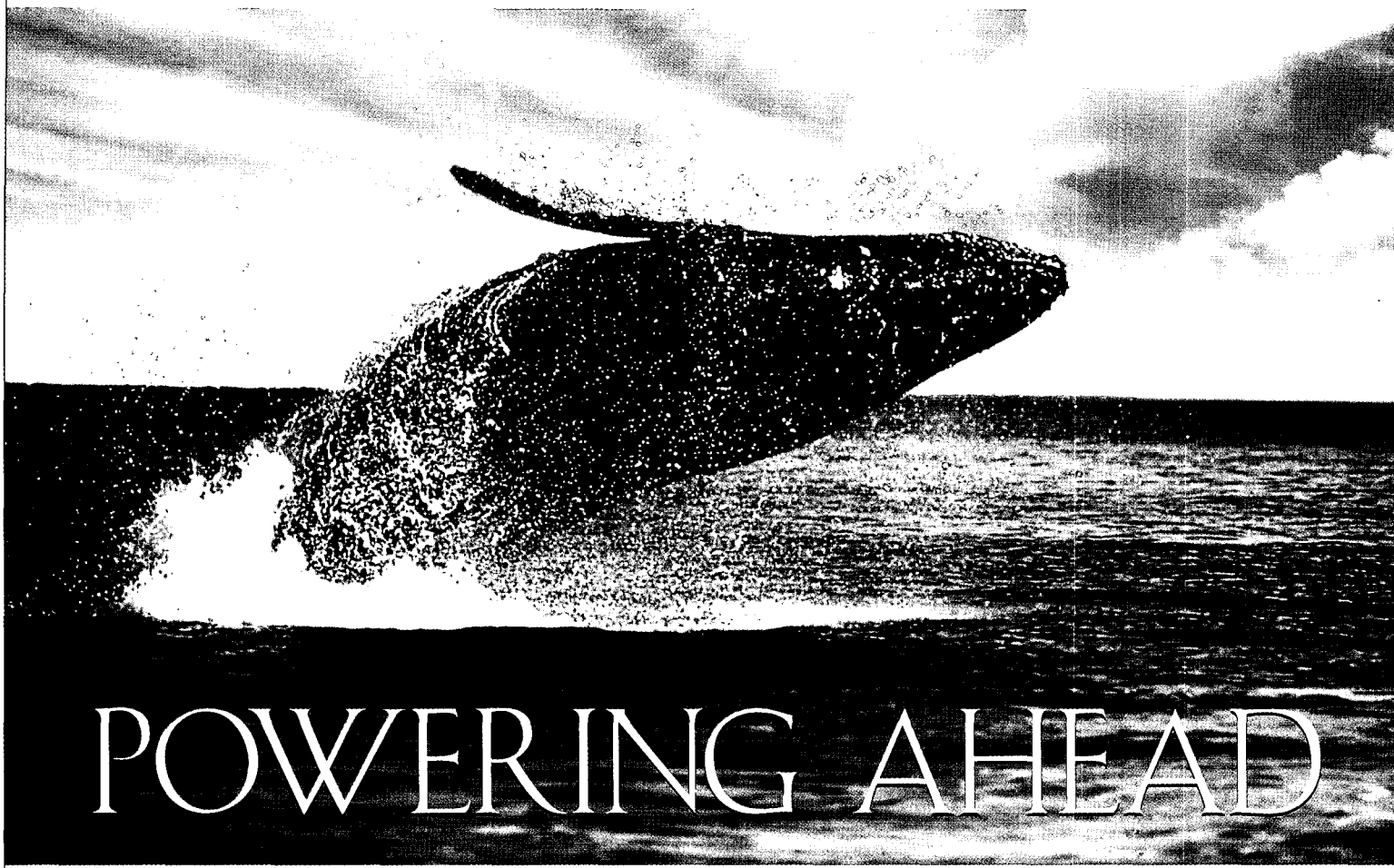

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